Unit-13 Legal Aspects of Business-I

1. The Indian Contract Act, 1972

Applicability: All over India

Assent Date: 25 April 1872

Enactment Date: 1 September 1872

It was enacted mainly with a view to ensure reasonable fulfillment of expectations created by the promises of the parties and also enforcement of obligations prescribed by an agreement between the parties. The object of the Act is also to introduce definiteness in commercial transactions. The law of contract is nothing but a child of commercial dealing.

The Act is neither retrospective nor exhaustive. It deals mostly with the general principles embodying contracts. The act does not cover the whole field of contracts law. Besides the Contract Act, there are various other laws regulating different types of agreements, e.g., the Transfer of Property Act deals with contract of sale of goods; the Partnership Act deals with partnership agreements, etc. The present Contract Act does not affect particular customs and usages of trade, which are not inconsistent with any of the provisions of law, for example, usages relating to Hundies as negotiable instruments. The law of Contract is different from other branches of law in as much as that the contracting parties are at liberty to make rules and regulations about the enforcement of their rights and fulfillment of their duties.

- This act provides all the general principles which govern the contracts made by the parties. It doesn't lay down the rights and duties of the parties, they are decided by the parties themselves.
- As every person has two types of rights like, right in personam (rights available to a party against a particular person) and right in rem (rights available to a party against the whole world). The contract gives the former right.
- The Act is neither retrospective nor exhaustive. It deals mostly with the general principles of embodying contracts; it does not cover the whole field of contracts law.

  In case, a particular matter is not covered by any section of the Contract Act or by any other law enforced in India, the courts may follow the principles of English Common Law, provided they are not inconsistent with Indian conditions and circumstances.

"
- *The law of contracts is not the whole law of agreements.*
  Sir Salmond, "the law of contracts is the law of those agreements which create legal obligations"
- *The law of contracts is not the whole law of obligations*
  Sir Salmond, "the law of contracts is the law of those obligations which have their source in agreements

Definitions

Salmond, *"an agreement creating and defining obligations between the parties".*

Sir William Anson, *"A contract is an agreement enforceable at law made between two or more persons, by which rights are acquired by one or more to acts or forbearances on the part of other or others."*

Justice Storey *observes, "A contract is deliberate engagement between competent parties, upon a legal consideration to do or to abstain from doing some act."*

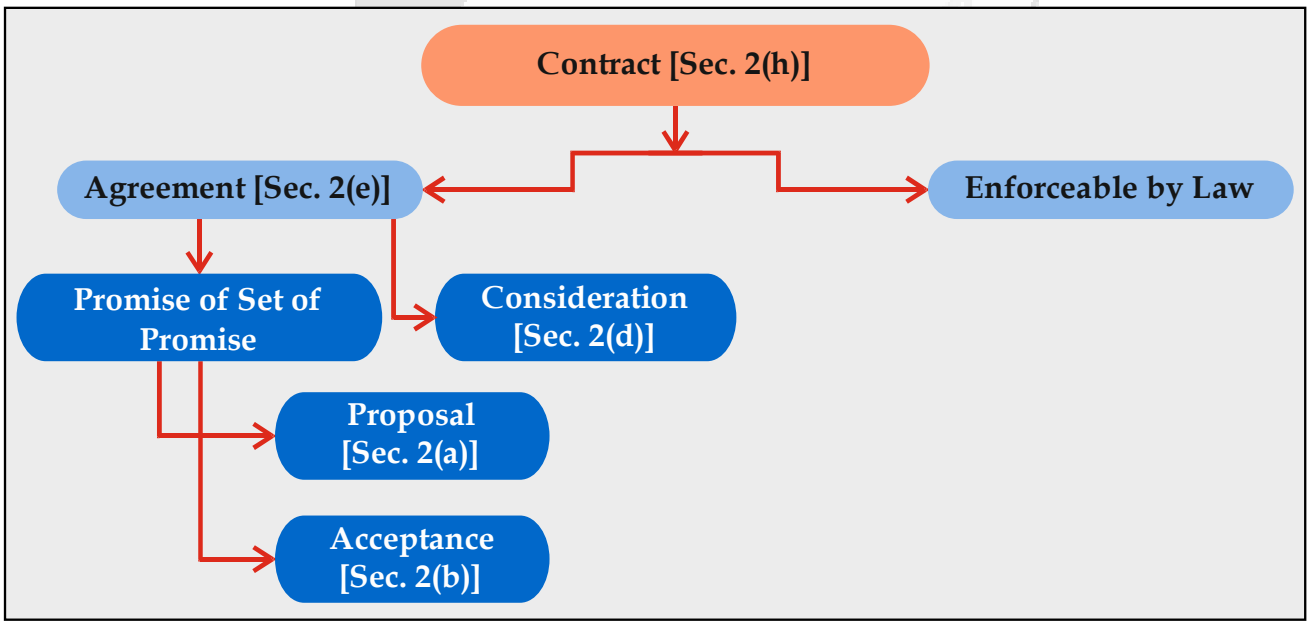
David M. Walker *states that contract may be defined as "an agreement between two or more persons intended to create legal obligation between them and to be legally enforceable."*

Sir Frederick Pollock,"*Every agreement and promise enforceable at law is a contract".*

Section 2(h) of the Indian Contract Act defines a contract as" Contract is an agreement enforceable by law"

These definitions resolve themselves into two distinct parts:

- *There must be an agreement.*
- *The agreement must be enforceable by law*



Essential elements of Contract

To check the fitness of validity of a contract, we must understand two sections i.e. section 2(h) and 10.

According to Section 2(h)," ***An agreement enforceable by law is a contract.***"

According to Section 10," ***All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.***"

With the analysis of above two sections and previous judgements given by law courts, we can bring out following as the essential elements of the contract:

(1) Two Parties : There must be two parties to constitute a contract. A contract can only be bilateral, and the same party cannot be a party from both sides. Hence, there cannot be a contract between A on one side and A on the other. Nor can a partner be a servant of his own firm as a man cannot be his own employer. A person cannot enter into a contract with himself.

(2) Offer and acceptance : There must be a lawful offer and acceptance for the formation of an agreement. The adjective 'lawful' implies that the offer and acceptance must satisfy the requirements of the contract act in relation thereto. The offer or proposal is defined under Section 2(a) of the Contract Act. Section 2(b) of the Act provides that when an offer is accepted then it becomes a promise.

(3) Intention to create a legal relationship : There must be a clear intention among the parties that the agreement should be attached by legal consequences and create a legal obligation. Agreements of a social or domestic nature do not contemplate a legal relationship, and as such, they do not give rise to a contract.

(4) Consideration : (Quid Pro Quo) : Third essential element of the valid contract is a consideration. The term consideration has been defined under section 2(d) of the act.

According to Section 2(d), "When at the desire of the promisor, the promisee or any other person has done or abstained from doing or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise"

Section 25, of the Act declares that **an agreement without the consideration is void.**

(5) Competent parties : Section 11 of the act declares that who are competent to contract. According to this section the contracting parties must possess contractual capacity.

The section states the criteria of parties competent to contract, which is as follows:

- Must attain the age of majority (an agreement with a minor is void ab initio
- Person of sound mind
- The person should not be disqualified by law

(6) Free consent : Free consent of the parties is another essential of the contract. Section 14 of the act defined the term free consent as follows-

Consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation, and mistake

1. **Coercion –** Committing any act forbidden by The Indian Penal Code 1860 or unlawful detaining of property or threatening to commit these acts.
   - ***Chickam Amiraju Vs. Chickam Seshamma*** – Threat to suicide amounts to coercion
2. **Undue influence –** The use by one party to the contract of his dominant position for obtaining an unfair advantage over the other party.
3. **Fraud – In *Derry Vs. Peek,*** it was held that representation made with reckless indifference amount to fraud.

4. **Misrepresentation –** It means a false representation.

5. **Mistake -** there are two types of mistakes i.e. mistake fact and mistake of law.

(7) Lawful object or consideration : For the formation of a contract, it is also necessary that the parties to an agreement must agree to a lawful object. The object must not be fraudulent or illegal or immoral or against the public policy or must not imply injury to the person or any other of the reason mentioned above the agreement is void. For Example, if A forces B to sign a contract for murdering C. This is not a lawful object. Hence, the contract will be void.

(8) Not expressly declared void : An agreement must not be one of those, which have been expressly declared to be void.

(9) Certainty of meaning : Another main element in a contract would be certainty. The terms and regulations being made in a contract should be stated clearly and understood by the parties of the contract. If the agreement is not certain, it would be no longer valid.

(10) Possibility of performance : An agreement to become a valid contract, the performance mentioned must be possible. Agreements for the acts which are not possible physically as well as legally, are not valid. If the performance was impossible from beginning it will be void ab initio. And if the performance becomes impossible later, then it is void subsequently.

(11) Agreements not declared void : The agreement which possess all the requisites for a valid agreement makes a valid contract. However, if any agreement is declared void according to the law of the country then it will be void and parties cannot seek relief from the court of justice.

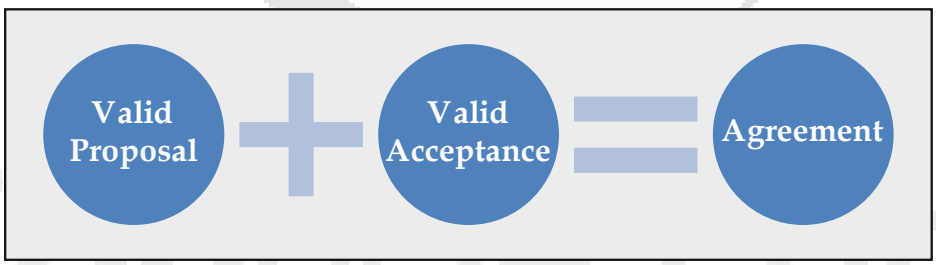
(12) Compliance of legal formalities : Usually, no legal formalities are required for a valid contract. A contract may be oral, written or gestural etc.

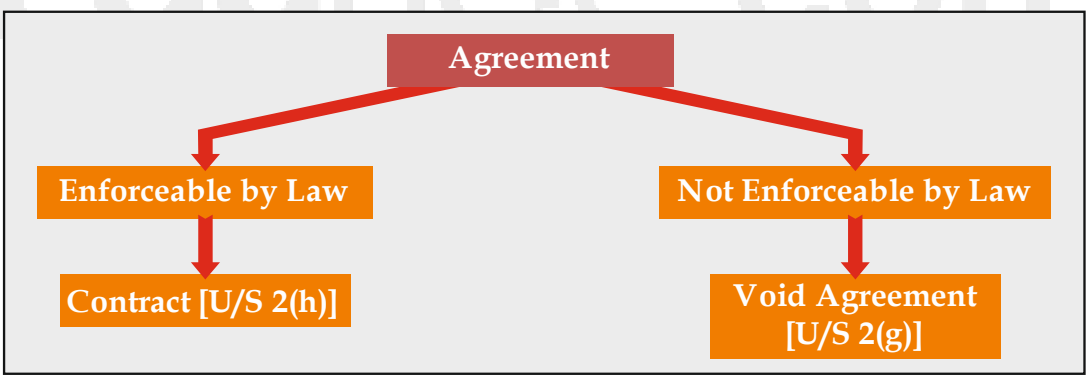
If any of the above element is missing, such agreement will not be a valid contract.

Formation of Contract

1. Agreement [Sec 2(e)] : Every promise and every set of promises forming the consideration for each other is an agreement.

According to [Sec 2 (b)] Proposal when accepted becomes promise.

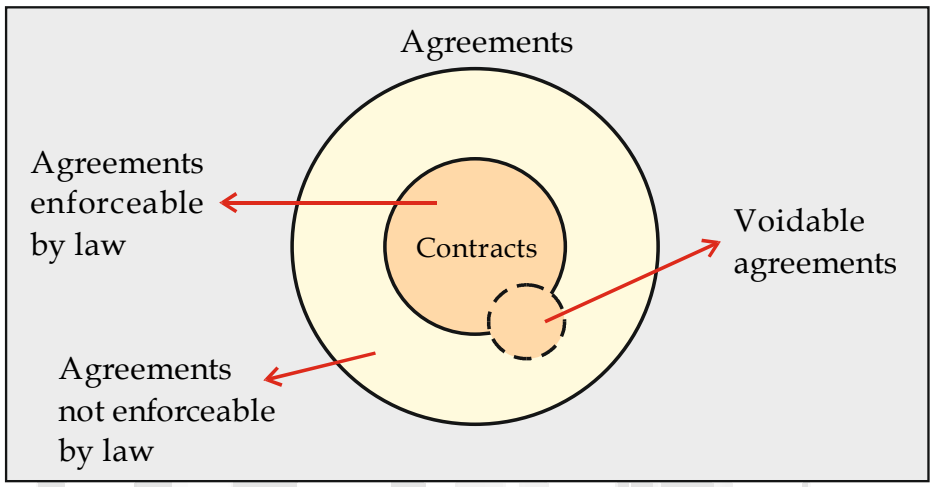




All Contracts are agreements, all agreements are not contracts

The concept of Voidable contracts: There exist some agreements which are enforceable on the part of one party but not on the option of other parties. It is on the discretion of that party if it is willing to enforce the contract or make it nonenforceable i.e. void. The voidable agreements are therefore both valid and void agreements. The dotted circle of voidable agreements denotes that they can be termed as void or valid on the discretion of one party thus covers the area of both valid and void agreements.

As the below picture depicts, contract is a wider term than agreement. This is the reason experts always repeat, ***"All Contracts are agreements, but all agreements are not contracts".***



We can understand this concept by dividing it into two parts:

1. All contracts are Agreements

According to section 2(a), ***"Every promise or set of promises forming consideration for each other is an agreement"***

According to section 2(h), ***"Contract is an agreement enforceable by law"***

Thus, the term **contract includes agreement and its enforceability.** The enforceability or validity of a contract depends upon the certain requirements which are mentioned in section 10 of the act with the head" Essential elements of a valid contract".

According to section 10," ***All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void."*** This section has already been mentioned in the previous topics.

Quick revision of Section 10:

- *There must be two or more parties.*
- *There must be an agreement between two or more parties competent to contract.*
- *The agreement must be made with an intention to create legal relations.*
- *The agreement must be with free consent.*
- *The agreement must be for a lawful consideration and object.*
- *The agreement must not be expressly declared void.*
- *All legal formalities must be complied with, if required by the governing law.*

[All these have already been discussed in this Chapter.]

Study of above three sections reveals that, **every promise or reciprocal promise can be an agreement but only those agreements which are enforceable by law are contracts. Hence, "All contracts are agreements"**

2. All Agreements are not Contracts

Agreement is a much wider concept than a contract. Agreements in which the intention to create legal obligation is absent are not contracts. Therefore, agreements relating to social matters are not contracts. For e.g., an agreement between two persons to go together for a walk, or a cinema show does not create any legal obligation on their part to abide by it. Also, agreements which the parties declare not to be binding do not constitute a contract. They may be just" honoured pledges" and expressly stated to be "outside the jurisdiction of any court". ***(Rose Frank Co. v. Crompton Bs. (1925)).*** There cannot be any binding contract unless there is intention to create legal relationship.

All Obligations also do not Constitute Contracts

Any obligation, which arises independently of an agreement, cannot be the basis of a valid contract. **A domestic arrangement with no intention to create legally binding relations will not constitute a contract, such as a promise by a father to pay pocket money to his son.** In the words of **Lord Atkin,** *"The most usual form of agreements, which do not constitute a contract, are the agreements made between husband and wife".* They are not contracting because the parties do not intend that they should be attended by legal consequences.

> *"The law of contracts is not the whole law of agreements nor is it the whole law of obligations. It is the law of those agreements which create obligations, and those obligations which have their sources in agreements."*
> **– Sir John Salmond**

Exercise-1 : Review Your Progress

1. *Intention to create legal relations is presumed in which of the following relationships:*
- *(i) Husband and wife living together.*
- *(ii) Parties to a commercial contract.*
- *(iii) Husband and wife who are separated.*
- *(iv) Friends who are part of a lottery syndicate.*

(A) All of the above. *(B) ii only.*
(C) ii, iii and iv. *(D) i, ii and iv.*

2. *The Indian Contract Act came into force on:*
(A) 15th September 1872 *(B) 1st September 1872*
(D) 1st October 1872 *(D) 15th October 1872*

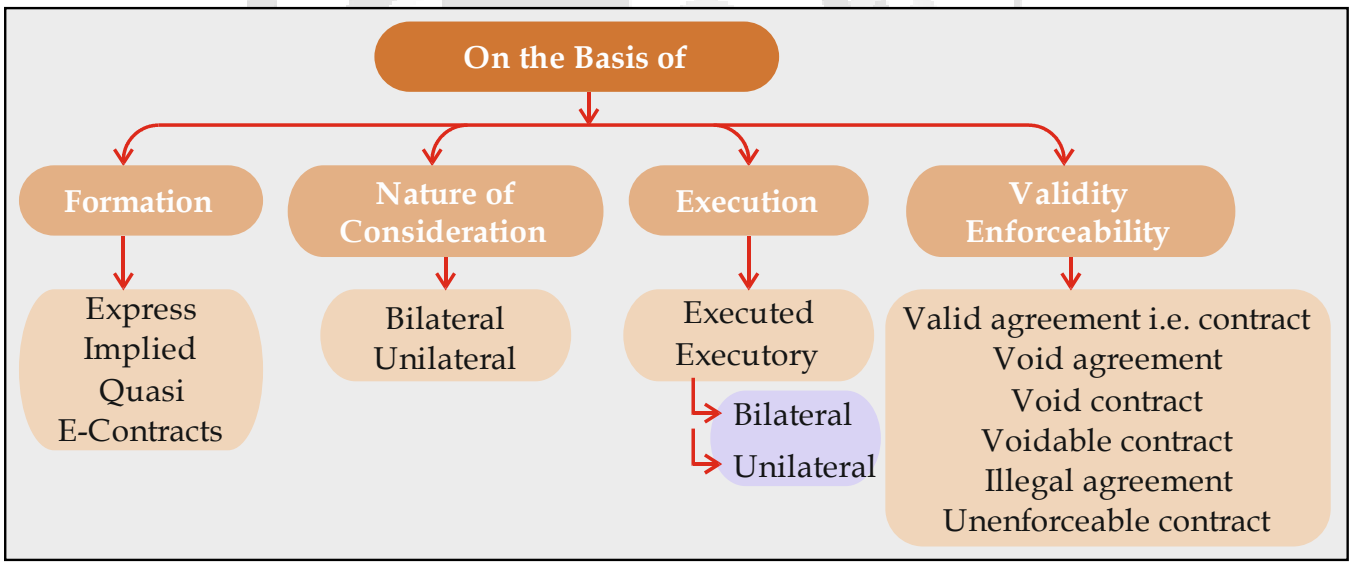
3. *The Indian Contract Act, applies to the:*
- *(A) Whole of India excluding Jammu & Kashmir*
- *(B) Whole of India including Jammu & Kashmir*
- *(C) States notified by the Central Government from time to time*
- *(D) None of the above*

Difference between an agreement and a contract

Basis of	Agreement	Contract
1. **Definition**	Every promise and every set of promises forming consideration for each other is an agreement.	An agreement enforceable by law is a contract.
2. **Creation**	An agreement is created by acceptance of an offer.	Agreement and its enforceability together create a contract.
3. **Legal rights and obligations**	An agreement may not create legal rights and obligations of the parties.	An contract creates legal rights and obligations between the parties.
4. **Necessity**	No contract is required to make an agreement.	Valid agreement is necessary for making a contract.
5. **Legally binding**	An agreement is not a concluding or legally binding contact.	An contract is a concluding or legally binding on the parties.
6. **Concept**	Agreement is a wider concept and includes contacts.	Contract is a narrow concept and it is only a specie of agreement.

Classification of contracts/agreements

Following are the commonly accepted classifications of the contracts/agreements:



I. Types of Contracts on the Basis of formation

(a) Express Contracts: When both the parties give their assent to the terms and conditions stated in the contract by way of words in writing or in verbal is called as express contract. According to section 9," the terms and conditions depend upon the words of the parties".

Examples of express contracts might include:

- Purchase and Sale contract
- Buyers agency contract
- Written contract for the purchaser of a property to purchase personal items from a seller
- Oral contact to pay for gardening services

(b) Implied Contract : When both the parties give their assent to the **terms and conditions stated in the contract by way of conduct or otherwise than in words,** it is implied contract.

For example: Sitting in a Bus can be taken as example to implied contract between passenger and owner of the bus.

(c) Quasi Contract: In Quasi Contracts, there will be no offer and acceptance. There will be no contractual relations between the partners. It is created by the virtue of law and is called Quasi Contract. Sections 68 to 72 of the Indian Contract Act, 1972 read about the situations where court can create Quasi Contract.

- 68 : When necessaries are supplied
- 69 : When expenses of one person are paid by another person.
- 70 : When one party is benefited by the activity of another party.
- 71 : In case of finder of lost tools.
- 72 : When payment is made by mistake or goods are delivered by mistake.

(d) E Contract (Online Contract) : Online contract or an electronic contract is an agreement modelled, signed, and executed electronically, usually over internet. An Online contract is conceptually similar and is drafted in the same manner in which a traditional paper-based contract is drafted. In case of an online contract, the seller who intends to sell their products, present their products, prices, and terms for buying such products to the prospective buyers.

Online can be categorized into three types mainly i.e. browse or web wrap contracts, shrink wrap contracts and clickwrap contracts. Other kinds of online contracts include employment contract, contractor agreement, consultant agreement, Sale re-sale and distributor agreements, non-disclosure agreements, software development and licensing agreements, source code escrow agreements. Though these online contracts are witnessed in our everyday life, most of us are not aware of the legal complexities connected to it; the use of online contract faces many technical and legal challenges.

II. Types of Contracts on the basis of nature of Consideration

(a) Bilateral Contracts: It is called Bilateral Contract, if considerations are to be moved in both directions after the contract. When both the parties exchange promise to each other to be performed in future.

(b) Unilateral Contract: If considerations move in one direction only after the contract, it is called Unilateral Contract. When proposer/offeror promises to perform in future, only when the promisee/offeree has done the task of his own desire.

III. Types of Contracts on the Basis of Execution

(a) Executed Contracts: If performance has been completed (by both the parties), it is called executed contract.

(b) Executory Contracts: In case where contractual obligations are not to be performed now but in future, it is called executory contract.

IV. Types of Contracts on The Basis of Validity

(a) Valid agreement/Contract [Section 2(h)]: Valid Contracts are the Contracts which are enforceable in a court of law. Such Contract should have:

- Consensus ad idem, (Meeting of the Minds)
- Certainty,
- free consent,
- two directional consideration,

- fulfillment of legal formalities,
- legal obligations,
- lawful object,
- capacity of parties,
- Possibility of performance, etc.

Example: there is a contract between A and B and let us assume that their contract has all those above said features. It is Valid Contract.

(b) Void agreement [Section 2(g)]: "An agreement not enforceable by law is said to be void." When the agreement is done with the incompetent person (who is not able to pursue any contract legally) or there is any mistake of fact, such agreements are void and does not possess any essentials of valid agreement.

- Void ab intio: 'Void from beginning'. No legal obligations of parties.

  No restitution: Any consideration paid cannot be restored **[*Inderjit Singh Vs. Sunder Singh]***

(c) Illegal agreements: When any agreement which is expressly or impliedly prohibited or forbidden by the law, it is known as illegal agreement. According to section 23, there can be case of:

- Fraudulent agreement
- Forbidden by law
- If permitted it could lead to defeat any of the provisions of the law
- Involves/implies injury to another person
- Immoral
- Opposed by public policy

Example: There is a contract between P and Q according to which Q has to murder S for a consideration of Rs. 15000/- from P. It is illegal contract.

Effects of such agreements:

- The agreement is void ab initio
- Any legal agreement which is subsidiary or collateral to illegal agreement then it will be void agreement.
- Only lawful part is enforceable
- Punishable as per the law of the country

Void Agreement	Illegal Agreement
Every void agreement is not illegal	Every Illegal agreement is void
Agreement which is void but not illegal does not affect the validity of the agreement which is collateral to it	Agreement collateral to the illegal agreement is also void

(d) Void Contract [Section 2(j)]: Contracts which are enforceable in a court of law are Valid Contracts. If any Contract lacks any of the above elements mentioned above topics (Except free consent and legal formalities), it is called Void Contract. In other words, if any agreement which was valid originally and later becomes void due to change in circumstances are void contracts under this section.

Effects :

- Contract is void
- Restitution is available. Person who has received the benefit should refund the consideration irrespective of his part performance on the contract.

	Basis of Distinction 1	Void Agreement 2	Void Contract 3
1	**Definition**	An agreement not enforceable by law is said to be void. [Sec. 2(g)]	A contract which ceases to be enforceable by law becomes void when it ceases to be en forceable. [Sec. 2 (j)]
2	**Time when becomes void**	It is void from very beginning	It becomes void subsequently due to change in law or change in circumstances.
3	**Restitution**	Generally no restitution is granted, however, the Court may on equitable grounds grant restitution in case of fraud or misrepresentation by minors.	Restitution may be granted when the contract is discovered to be void or becomes void.
4	**Description in the Act**	Such agreements have been mentioned as void in the Act. Agreements without consideration, agreements with unlawful object or consideration and some other agreements have expressly been declared to be void.	There is no mention of cases of void contracts in the Act. They are created by circumstances and law Courts decide whether they have become void or not.

(e) Voidable Contract [Sec 2(i)]: Voidable Contracts are those contracts which are deficient in regard free consent only. In other words, it is a contract which is made under certain pressure either physical or mental. At the option of suffering party, it may become either Valid or Void in future on the option of the party aggrieved.

- Voidable from beginning (**A consent obtained is not free, if obtained by Coercion, Undue influence, Mistake, Fraud, Misrepresentation etc**.)
- Voidable subsequently
  - On refusal of performance
  - When party presents another to perform
  - When party fails to perform within specified period

For example: there is a Contract between A and B where B has forcibly made A involved in the Contract. It is voidable at the option of A.

Effects of such contract :

- Valid at the option of the party aggrieved
- Valid till rescinded
- Other party relieved from performing
- Restitution
- Compensation should be paid to aggrieved party in case of damage

(f) Unenforceable: A contract which has not properly fulfilled the required legal formalities is called unenforceable contract. That means unenforceable contract suffers from some technical defect which may be insufficient stamp etc. and hence, after rectification of that technical defect, it becomes enforceable or valid contract.

Example : X and Y have drafted their agreement on Rs. 100/- stamp where it is to be written actually on Rs. 1000/– stamp. It is unenforceable contract.

Void Agreement and Void Contract

A void agreement is void from the very beginning i.e., void ab initio, while a void contract was valid at the time when it was made but becomes void later on because of certain reasons. Agreement void ab initio or which becomes void subsequently will have these effects:

(i) The agreement shall be unenforceable.

(ii) Money paid or property transferred is recoverable subject to the condition that both the parties were ignorant about the illegal or void nature of the agreement when it was made.

(iii) Collateral transactions shall not become void unless the agreement has also been illegal.

(iv) All lawful promises shall remain valid in case they are severable and can be enforced.

Difference between Void Agreements, Illegal Agreements, and Voidable Contracts

1. The term "illegal agreement" has wider conception than void agreement. **All illegal agreements are void but all void agreements are not necessarily illegal**, e.g., a wagering agreement is void but not illegal or an agreement with a minor is void but not illegal. Illegal agreements are prohibited by law. Void agreements are declared non-enforceable in a court of law. If the parties wish to perform, they can perform void agreements.
2. Though the legal effects of both are the same, i.e. void ab initio. But a void agreement does not affect the performance of collateral transaction, but illegality of the original contract will make even the collateral transactions tainted with illegality.
3. For entering into a void agreement, there is no penalty on the parties. But for an illegal agreement the parties may be punished.

Proposal [Sec 2 (a)]

English term = Offer

An offer is a promise to do or abstain from doing something with the object of getting another person's assent thereto.

Examples : A offers to sell his dog to B for Rs. 200; A offers not to open a shop in a particular area if B gives him Rs. 50,000.

One party makes a definite offer to the other party and that the other party accepts it in its entirety.

In simple words, it means, an offer or proposal is a statement by the offeror of what he will give in return for some act or promise of the offeree.

Section 2(a) of the Act defines an offer or proposal as follows:

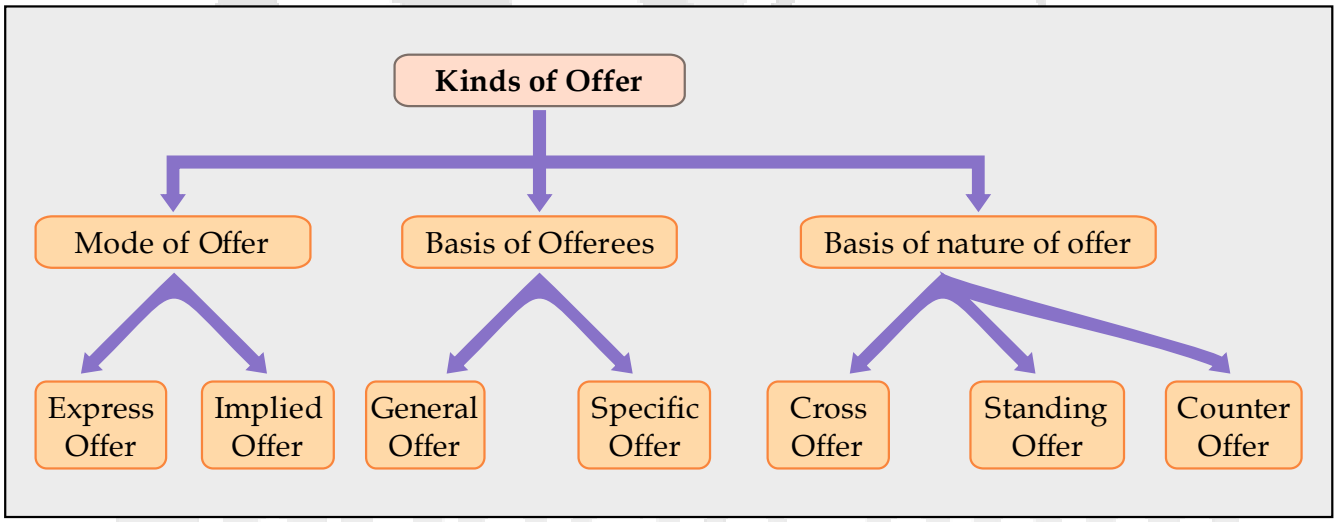
"When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make the proposal."

Thus, an offer is a proposal by one person, whereby he expresses his willingness to enter into a contractual obligation in return for a promise, or act, or forbearance. Thus, offer consists of two parts: one, a promise by the offeror, together with, second, a request addressed to the offeree for something in return.

Essentials of a Valid Proposal :

1. Minimum two parties
2. An offer must intend to create legal relationship.
3. It must be signified or communicated to the offeree
4. An offer may be communicated by word of mouth, by writing or by conduct
5. A written offer may be contained in a letter, telegram, circular or advertisement.
6. The offer must not be vague or uncertain.
7. A mere quotation, or statement of a future offer, or an invitation to offer, is not an offer.
8. An offer may be specific (made to a particular person) or general (made to the world at large) and positive or negative.
9. Offer made to obtain assent of other party.

Kinds of Offer



(i) **Express Offer:** It is an offer that is done through words that can be either oral or written. The oral offer can be made face to face or via telephone. The written offer can be made via text messages, advertisements, letters, or e-mail.

(ii) **Implied Offer:** It is an offer conveyed through acting or signs. But if a party observes a silence over the offer then that offer cannot be valid.

Eg. When a lady stops a taxi. She takes seat in it and asks the driver to move towards certain place, then it is an implied offer.

(iii) **Specific Offer:** It is the offer made to a specific person or group of persons and can be accepted by the same, not anyone else.

E.g. William offers to buy a car from Miley for Rs 10 Lakh. Thus, a specific offer is made to a specific person, and only Miley can accept the offer.

(iv) **General Offer:** It is the offer made to public at large and not to any particular person. It can be accepted by anyone by abiding the terms of it.

E.g. Mr. A advertises in the newspaper that whosoever find his missing son would be rewarded with Rs. 500. Mr. B reads it and after finding the boy, he calls Mr. A to inform about his missing son. Now Mr. A is entitled to pay Rs. 500 to Mr. B for his reward.

(v) **Cross Offer:** When both the parties involved makes a similar offer to one another without knowing the each other's offer then it is called Cross offer. E.g. X sends an e-mail to Y to purchase his car for Rs. 200 while at the same time, Y unknowingly is also sending an e- mail to X stating his desire to buy the car at Rs. 200. This is the cross offer made where one party needs to accept the offer of the another.

(vi) **Counter offer:** Counter offer is proposal that is made as a result of an undesirable offer. A counter offer revises the initial offer and makes it more desirable for the person making the new offer. An offer that provides new terms or conditions becomes a counter offer. Once the buyer or offeree accepts a counter offer, a binding contract is formed against the offeror.

(vii) **Standing or Open Offer:** A standing offer is in the nature of a continuing offer. A tender or offer for the supply of such goods as may be required, no quantity being specified, is a continuing standing offer. Such an offer is accepted from time to time whenever an order is given for any of the goods specified in tender.

Bengal Coal Co. V. Homes Wadia & Co.: The offer that is continuous in nature is the standing offer.

Invitation to an Offer

Offer means a proposal by a person in which he makes his willingness to enter into a legally binding contract for some consideration. *An Invitation to offer means an intention of a person to invite others with a view to enter into an agreement.*

An offer is made with the object of getting consent of the offeree. An invitation to offer on the other hand is made with an offer can be accepted by the offeree. An invitation to offer cannot be accepted by the person to whom it is made. E.g. catalogue of goods. Auction, Tender etc.

An offer when accepted becomes an agreement. An invitation to offer cannot be accepted at all.

Offer	Invitation to an offer
Offer means a proposal by a person in which he makes his willingness to enter into a legally binding contract for some consideration.	An Invitation to offer means an intention of a person to invite others with a view to enter into an agreement.
An offer is made with the object of getting consent of the offeree.	An Invitation to offer cannot be accepted by the person to whom it is made.
An offer when accepted becomes an agreement.	An invitation to offer cannot be accepted at all.

Termination of Offer : An offer may come to an end under the following circumstances :

1. When the offerer prescribes a time within which the offer must be accepted, the offer lapses as soon as the time expires. In case offeror does not prescribe time, offer terminates after the expiry of reasonable time.
2. An offer lapses by not being accepted in the mode prescribed, or if no mode is prescribed in some usual and reasonable manner.
3. An offer lapses by the death or insanity of the offerer or of the offeree before acceptance.
4. An offer lapses by revocation. The offerer may withdraw the offer at any time before it has been accepted.

What is not Proposal?

1. Intention to put a proposal; or

2. Invitation to put a proposal.

Intention of put a proposal :

The objective of proposal is to get the assent of the other party whereas the intention to put a proposal is merely an expression or declaration by a person that he intends to offer something in future.

Invitation to Proposal :

The objective of proposal is to get the assent of the other party but the invitation to proposal is made with an intention to receive a proposal from others.

Examples of Invitation to Offer :

***(a) Catalogue or price list** of goods or services for sale*

***(b) A banker's catalogue** of charges is an invitation to an offer*

(c) Menu Card

(d) Price-tags

(e) An advertisement to sell goods

(f) Job or tender advertisement

***(g) Prospectus inviting** public to apply for shares in a company*

(h) Time table of a carrier

(i) A quotation of price

(j) An advertisement for auction sale

Acceptance [Section 2(b)]

All contracts are made by the process of a lawful offer by one party and its lawful acceptance by the other party. Acceptance is the manifestation by the offeree of his assent to the terms of the offer.

Who can accept? An offer made to a particular person can only be accepted by him as he is the person with whom the contract is intended to be entered into. An offer made to a class of persons can be accepted by any member of that class. An offer made to the world at large can be accepted by any person whatsoever.

Rules Regarding Acceptance: The acceptance of an offer, to be legally effective, must satisfy the following requirements.

1. Acceptance must be Absolute and Unqualified : Section 7(1) of the Indian Contract Act provides that 'In order to convert a proposal into a promise, the acceptance must be absolute and unqualified.' A qualified and conditional acceptance amounts to a counter offer which amounts to non-acceptance. Moreover, an offer must be accepted in full. If only a part of the offer is accepted, the acceptance will not be valid.

For example, X offers to sell 400 quintals of sugar to Y at a certain price. Y accepts to buy 280 quintals only. It is not a valid acceptance since it is not the whole of the offer.

2. Acceptance must be in Prescribed Manner : Acceptance has to be made in the manner prescribed or indicated by the offered. If the offer is not accepted in the prescribed manner it is up to the offered to accept or reject such acceptance. But when the acceptance is not in the prescribed manner and the offered wants to reject it, he must inform the acceptor within a reasonable time that he is not bound by acceptance since it is not in the prescribed manner. If he does not do so within a reasonable time, he will be bound by the acceptance. Where no manner is prescribed.

3. Acceptance must be Communicated : The acceptance is valid only when it has been communicated to the offered. A mere silence or mere mental acceptance not evidenced by words or conduct is not acceptance. However, the offered, while making an offer, cannot impose a burden on the other party to communicate his refusal or rejection.

He can only prescribe the manner in which the offer is to be accepted.

4. Only Authorised Person Should Communicate about the Acceptance : In order to make an acceptance valid, it should be communicated by the offeree himself or by a person who has the authority to accept.

In case, Powell vs. Lee (1908), It was held that he was not informed about his appointment by some authorized person; hence there was no communication of acceptance.

5. Acceptance should be made within the Time Prescribed or within a Reasonable Time : The acceptance should be given within the prescribed time or within a reasonable time. What is a reasonable time depending upon the facts of the case?

6. Acceptance should be given before the offer Lapses or is Withdrawn : The acceptance must be given while the offer is in force. Once an offer has been withdrawn or stands lapsed, it cannot be accepted.

7. Acceptance may be given by performance of conditions : An offer may be accepted by performance of conditions or act required by the offeror. [Sec.8]

8. It may be given by acceptance of consideration : An offer may also be accepted by the acceptance of consideration forwarded or sent along with the offer by the offeror.[Sec.8]

9. It must not precede an offer : The acceptance must be given only after the communication of offer is complete. If the acceptor has no knowledge of the offer, he cannot accept it.

10. It must be given by the person to whom offer is made : Generally acceptance must be given by the person to whom the offer is made i.e. offeree. No person other than the offeree has a right to give acceptance.

11. Acceptance must be from competent person : To constitute a valid contract, the acceptance must be given by the competent or authorised person. Acceptance given by any unauthorised person will not create any binding contract.

12. Acceptance subject to contract is no acceptance : If the acceptance has been given "subject to contract" or subject to approval by certain persons or by the use of similar words has no effect at all.

A few facts about Acceptance :

(i) ***Rejected offer*** *cannot be accepted.*

(ii) ***Counter-offer*** *does not constitute acceptance.*

(iii) ***Cross offer*** *cannot be construed as acceptance.*

(iv) ***Silence does not*** *generally amount to acceptance.*

(v) *Acceptance of offer means acceptance of all the terms of offer.*

(vi) *Circumstances of acceptance must show that the acceptor is able and willing to fulfill the terms of the offer.*

(vii) ***Grumbling acceptance is a valid acceptance.***

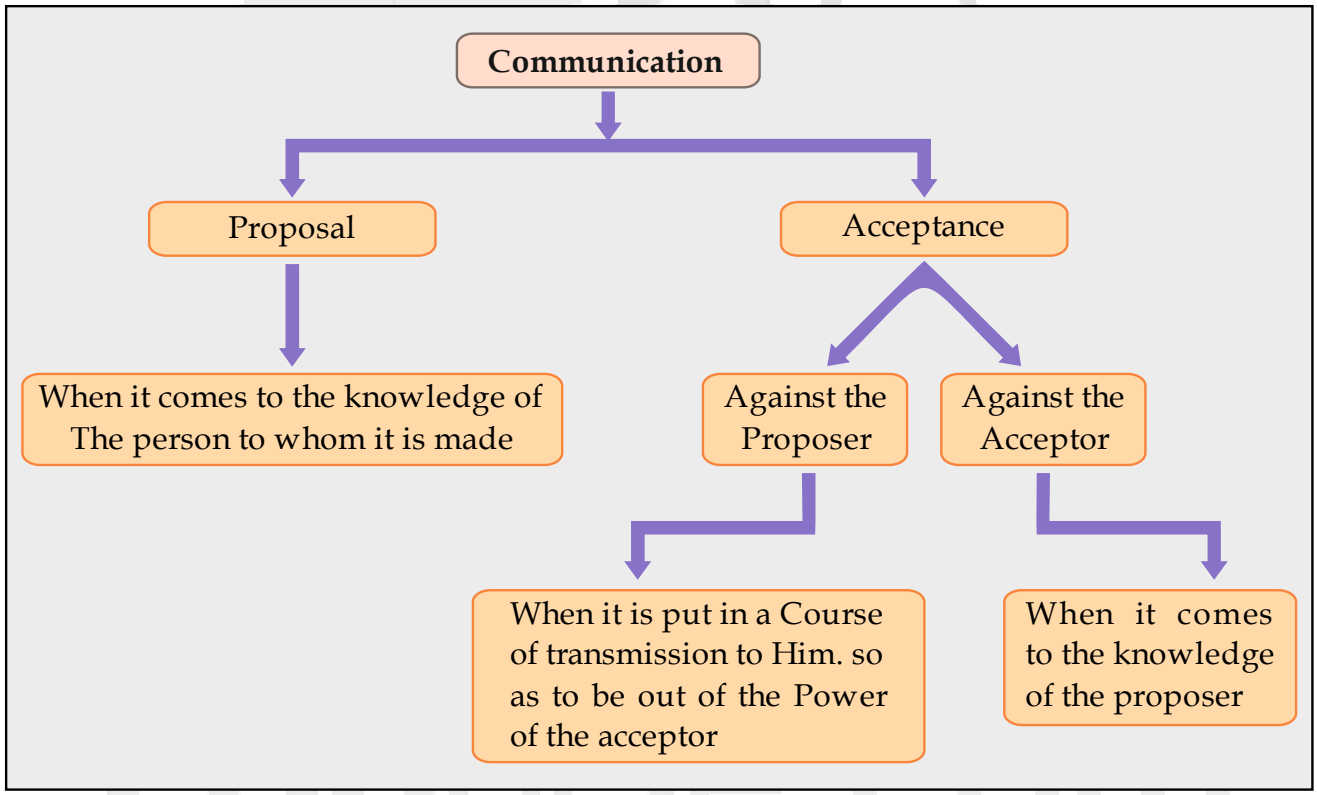
(viii) *The seeking* ***clarification of offer neither amounts to acceptance*** *of the offer nor to the making of a counter offer.*

Effect of Acceptance

A contract is created only after an offer is accepted. Anson explained the effect of acceptance as "Acceptance is to an offer what alighted is to a train of Gunpowder."

It should be noted that if offeree remains silent, then it will not be concluded as acceptance.

Communication of Proposal and Acceptance



Section 3 defines how a communication, acceptance, or revocation can be signified: The communication, acceptance, and revocation are deemed to be made by an act or omission of the party proposing, accepting, or revoking, by which he intends to communicate such proposal, acceptance, or revocation, or which has the effect of communicating it. Thus, a proposal may be made by any way, which has the effect of laying before another person his willingness to do nor not do something. The acceptance can be signified similarly. Section 9 specifies that a promise (i.e. a proposal and its acceptance) can be formed either by words, written or oral, whichever the case it is called express or by action, in which case it is called implied.

Section 4 specifies when a communication is complete: Communication of a proposal is complete when it comes to the knowledge of the party to whom the proposal is made. For example, if A sends a proposal in the mail to B and if the mail is lost, it can be held that the communication of the proposal is not complete.

Communication of the acceptance is complete, as against the promisor, when it is put in course of transmission to the promisor so as to be out of the power of the acceptor, as against the acceptor, when it comes to the knowledge of the promisor. For example, as soon as B drops a letter of acceptance in mail back to A, A is bound by the promise. However, B is not bound by it unless A receives the acceptance letter.

General Rules as to Communication of Acceptance :

- *Where the acceptance is given by post, the communication of acceptance is complete as against the proposer when the letter of acceptance is posted.*
- *Where the letter bears insufficient stamps and/or incorrect address of the offeror due to the fault of the acceptor, the communication of acceptance is not complete.*
- *Sometimes, the letter of acceptance posted by the acceptor never reaches the offeror, or it is delayed in transit. These situations do not affect the validity of acceptance.*
- *In modern times contracts are often made by giving acceptance through instantaneous means of communication such as telephone, teleprinter, telax, fax machines, e-mail, SMS etc. Therefore, the question arises as to when in such cases, the contract is concluded.*
  Communication of acceptance by means ***of instantaneous communication is complete when the acceptance is received by the offeror***.
  The Supreme Court of India *endorsed this principle in Bhagwan Dass Kedia v. Girdharilal & Sons. AIR (1966) SC 543.*
- *Case of acceptance by the post, the place where the letter of acceptance is posted is the place of contract.*
  In Bhagwandass v. Giradharilal, the Supreme Court of India endorsed this principle. *In this case, the plaintiff offered on phone from Ahemdabad to defendants at Khamgaon and the defendants accepted the offer.* ***The acceptance was heard/received at Ahemdabad. Hence, Ahemdabad was held to be the place of contract.***
- *In case of acceptance by post,* ***the time of posting the letter of acceptance is the time of contract***. *But in case of acceptance by instantaneous means of communication, the time of contract is the* ***time when the offeror gets the communication of acceptance***.
- *Where the offer has been made through an agent, the communication of acceptance is completed when the acceptance is given either to the agent or to the principal.*
- *Acceptance given on microphone/loudspeaker is not a valid acceptance.*

Communication of a revocation is complete as against the party who makes it when it is put in course of transmission to the party to whom it is made, so as to be out of the power of the party who makes it; as against the party to whom it is made, when it comes to the knowledge of the party to whom it is made. For example, if A sends a letter revoking his

proposal, it will be complete against A as soon as the letter is dropped in the mailbox and is out of his control. However, the revocation will be held complete against B only when B receives the letter. Further, if B revokes his acceptance by telegram, it will he deemed complete against B as soon as he dispatches the telegram. It will be held complete against A, when A receives the telegram.

Revocation of Offer

Revocation refers to the withdrawal of an offer. An offer may be withdrawn any time before acceptance. To be valid, a revocation of an offer must be communicated to the offeree. According to section 5 of Indian Contract Act 1872 **A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.** Illustration: A proposes, by a letter sent by port, to sell his house to B. B accepts the proposal by a letter sent by post. A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.

Revocation How Made: Section 6 provides that a proposal is revoked in the following situations:

a. By Notice of Revocation: Offer may be revoked by a communication of a notice of revocation by the offeree to the other party before acceptance is complete against the offeror himself. An offer made in writing may be revoked by words of mouth. The notice of revocation may not always be express. A notice of revocation to be effective must be communicated to the offeree.

b. By Lapse of Time : A proposal will come to an end by the lapse of time prescribed in such proposal for its acceptance or, if no time is so prescribed by the lapse of time of reasonable time is a question of fact depending upon the circumstances of each case.

c. By Non-Fulfillment of Condition Precedent: A proposal is revoked when the acceptor fails to fulfil a condition precedent to the acceptance of the proposal which was conditional offer. Thus, X may offer to sell certain goods to Y on condition that Y pays a certain amount before a certain date.

d. By Death or Insanity: A proposal is revoked by the death or insanity of the proposer if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

e. By Counter Offer: An offer comes to end when the offeree makes a counter offer or rejects the offer. Where an offer is accepted with some modification in the terms of the offer or with some other condition not forming part of the offer, such qualified acceptance amount to a counter offer.

f. By the non-acceptance of the offer according to the prescribed or usual mode. The offer will also stand revoked if it has not been accepted according to the prescribed.

Revocation of the Acceptance (Sec-5)

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

The position is different with regard to contracts through Post Office. Acceptance given by a person who is not authorised to give acceptance is not effective in law. It must be given by the party to whom it is made.

Contract through the Post Office

- An offer and its acceptance may be made by post. Under Indian Law, an offer is made when the letter containing the offer is delivered to the offeree.
- An acceptance is complete against the proposer or offeror when it is posted to him.
- Acceptance binds the acceptor only when it reaches the offeror.
- An offer can be revoked if the letter of revocation reaches the offeree before he posts the letter of acceptance.
- An acceptance can be revoked as against the offeror if the letter of revocation reaches the offeror before he receives the letter of acceptance.

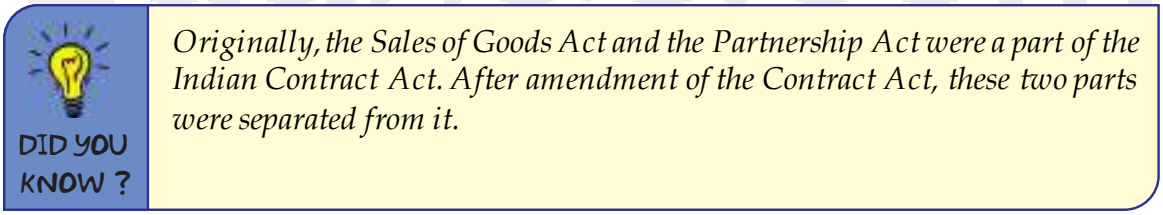
Consideration

Necessity of Consideration: Contracts result only when one promise is made in exchange for something in return. The something in return is consideration. Its necessity arises because law aims at enforcing the mutual promises of the parties. The need of consideration limits the enforcement of promises to those in which each of the parties has bargained to give or surrender something. The fact that each party has agreed to give or surrender something, suggests that the parties have devoted some reflection to the matter and that they seriously desire the promises to have legal consequences.

Definition of Consideration: Pollock defines it as: – "An act or forbearance of one party, or the promise thereof, is the price for which the promise of the other is bought, and the promise thus given for value is enforceable." Consideration must be an act or forbearance of some value in the eye of law. The promisee must suffer a legal detriment. The detriment need not be real, it need not involve actual loss to the promisee. This means legal detriment as different from detriment infact. It is giving up by the promisee of a legal right, the refraining from doing what he has the legal right to do, or the doing of what he has the legal right not to do. So, a benefit to the promisor or a detriment to the promisee is sufficient consideration for a contract.

Example :

1. A agrees to sell his motor car to B for Rs.70,000. For the promise of A, the consideration is Rs.70,000. For B's promise, the consideration is the motor car.
2. An employs B as manager of his factory at a salary of Rs. 4,000 a month. The monthly salary is the consideration by B, and the services rendered by B constitute the consideration received by A.
3. A agrees not to file a suit against B if B pays him Rs.500 by a fixed date. The forbearance of A is the consideration for B's payment.



Originally, the Sales of Goods Act and the Partnership Act were a part of the Indian Contract Act. After amendment of the Contract Act, these two parts were separated from it.

Rules Regarding Consideration

Consideration is essential to support a contract. A promise without consideration is void. The following are the legal rules of the consideration.

1. **Consideration must move at the desire of the promisor :** The act constituting consideration must have been done at the desire or request of the promisor. If it is done at the instance of third party or without the desire of the promisor, it is not consideration.
2. **Consideration may move from the promisee or any other person :** Under the English law, consideration must move from the promisee. This means that a person can enforce a promise only if he himself did or abstained from doing or promised to do or abstain from doing, something in return for the other's promise. He can not sue if the consideration for the promise moved from a third party. Simply stated, this means a stranger to consideration cannot sue on a contract, i.e., if the consideration moves from a person other than the promisee, the promisee cannot enforce the agreement**.** But under the Indian Law, consideration may move from the promisee or any other person. This means a person can sue on a contract even if the consideration for the promise moved from a third party. In other words, a stranger to consideration, in a contract, may maintain suit. A stranger to consideration under the English Law cannot sue on a contract. But under the Indian Law, he can do so provided he is a party to the contract. It is a general rule of law that a person who is not a party to a contract can sue if the contract is for his benefit. This means that unless there is a privity of contract, a party cannot sue on a contract. Privity of contract means the relationship subsisting between the parties who have entered into contractual obligations. It implies a mutuality of will and creates a legal bond or tie. A contract cannot confer rights or impose obligations arising under it on any person unless there is privity of contract.
3. **Consideration may be past, present or future :** The definition of consideration, when analysed, clearly lays down that the consideration may be past, present or future. The words used in Section 2 (d) are:" has done or abstained from doing (past), or does or abstains from doing (present), or promises to do or abstain from doing (future), something"
   a. Past consideration: When the consideration by one party for a present promise was given in the past, it is said to be past consideration.
   b. Present consideration: When the consideration is given simultaneously with the promise, i.e., at the time of the promise, it is said to be present consideration.
   c. Future consideration: When the consideration from one party to the other is to move at some future date, it is future consideration.
4. **Consideration need not be adequate:** consideration means something in return, need not necessarily be commensurate in value with something given. The law simply provides that a contract should be supported by consideration. It ordinarily does not consider adequacy of consideration for enforcing a contract. The parties are free to make their own bargains and it is up to them to consider the pros and cons of every promise. Consideration, however, must be something to which the law attaches value though it need not be equivalent in value to the promise made.

5. **Consideration must be real and not illusory:** Consideration although need not be adequate, must be real, competent and of some value. The mere fact that promisor has some sentimental motive for making the promise will not make it binding. Also, consideration must not be illegal', impossible, or illusory or sham where consideration is legally or physically impossible or uncertain or ambiguous, it shall not be forceable in the court of law.

6. **Consideration must be something which the promisor is not already bound to do performance of a pre-existing obligation:** A promise to do what one is already bound to do, either by general law or by a contract, is not a good consideration for a new promise, since it adds nothing to the pre-existing legal obligation.

7. **Consideration must be lawful:** The consideration given for an agreement must be lawful. Where the consideration is unlawful, the courts do not allow an action on the contract.

   The consideration of an agreement is unlawful, if:

   (i) It is forbidden by law or

   (ii) It is of such a nature that, if permitted, it would defeat the provisions of any law or

   (iii) It is fraudulent or

   (iv) It involves or implies injuring to the person or property of another or

   (v) The court regards it as immoral or opposed to public policy.

   Every agreement of which the consideration is unlawful is void.

> *A stranger (third-party) to consideration is different from a stranger to a contract.*

Types of Consideration : Consideration may be of the following types :

(i) Executory or future, which means that it will move at a future date. A promise to pay the price at a future date for goods delivered to day is executory or future consideration.

(ii) Executed or present, which moves simultaneously with the promise. Example: A buys a watch and pays for it there and then.

(iii) Past, which means a past act or forbearance. In this case, the consideration of one party was given before the date of promise. Example: A found B's watch in July and gave it to him. In August B promises to give Rs.50 to A as a reward. (Under English law, past consideration is no consideration.)

Contract without consideration is void

A promise without consideration cannot create a legal obligation. The general rule is that an agreement made without consideration is void. This rule is contained in Section 25 of the Indian Contract Act, which declares that 'an agreement made without consideration is void'. This means that consideration is a must in all cases. But this Section provides certain exceptions where an agreement is valid even without consideration.

These cases are :

Agreement made on account of natural love and affection [Section 25(1)] : An agreement without consideration is enforceable if, it is

- Expressed in writing and
- Registered under the law for the time being in force for the registration of documents, and is made on account of natural love and affection,
- Between parties standing in near relation to each other.

The following conditions must be satisfied for the application of the exception :

- The agreement is in writing
- It is registered.
- It is made on account of natural love and affection
- It is between parties standing in near relation to each other.

Agreement to compensate for past voluntary services [Section 25(2)] : An agreement without consideration is enforceable, if it is a promise to compensate wholly, or in part a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do.

Example : A finds B's purse and gives it to him. B promises to give him Rs. 500. This is a contract. In order that a promise to pay for past voluntary services be binding, the following conditions must be satisfied :

- The services should have been rendered voluntarily.
- The services must have been rendered for the promisor and not anybody else.

Agreement to pay time-barred debt [Section 25(3)] : According to the exception a promise to pay a time barred debt is enforceable if such promise is in writing and signed by the debtor. A time barred debt cannot be recovered and therefore a promise to repay such debt is without consideration.

The following conditions must be satisfied for the application of this exception

- The promise should be in writing.
- It should be signed by the promisor or his agent.
- The debt must be time-barred i.e., the limitation period for the recovery of the debt must have expired.
- There must be an express promise to pay. The intention should not be unexpressed. It may be to pay whole or part of the debt.

Example : A owes B Rs. 20,000 but the debt is barred by the Limitation Act. A signs a written promise to pay B Rs. 10,000 on account of the debt. This is a contract.

4. **Gift actually made:** In case, the gift is actually made then it will not affect the validity of the contract and it cannot be recovered again on the plea that is was void for want of consideration.
5. **Promise to charities/donation:** A mere promise to contribute to any charity or to give any donation is not enforceable by law because it is without consideration.
6. **Contract of Agency:** No consideration is necessary for the creation of agency
7. **Contracts of gratuitous bailment:** There is no consideration for the bailor, still he possesses all the rights with some exceptions to enforce the contract of bailment.

8. **Remission:** When a promisee agrees to accept a lesser sum or performance in satisfaction of a larger sum due to whole promise, no consideration is necessary for such an agreement of remission. Similarly, no consideration is necessary for an agreement to extend the time for the payment of an existing contract.

Privity of Contract (Stranger to Contract)

It is a general rule of law that a person who is not a party to a contract cannot sue upon it even though the contract is for his benefit. This means that unless there is privity of contract, a party cannot sue on a contract. This means a contract cannot confer right or impose obligations arising under it or any person other than parties to it.

Exceptions:

(1) A person in whose favour a charge or other interest in some specific immovable property has been created may enforce it even though he is not a party to the contract.

(2) Marriage settlement partition or other family arrangements. Where an agreement is made in connection with marriage, partition or other family arrangements and a provision is made for the benefit of a person, he may sue although he is not a party to the contract.

(3) Acknowledgment or estopple. Where the promisor, by his conduct, acknowledges or otherwise constitutes himself as an agent of the third party, a binding obligation is thereby incurred towards him.

(4) Assignment of a contract. The assignee of rights and benefits under a contract not involving personal skill can enforce the contract subject to the equities between the original parties.

No Consideration Necessary: The general rule is that an agreement without consideration is void. But Section 25 of the Contract Act lays down three exceptions which make a promise without consideration valid and binding.

An agreement without consideration is Valid

(1) if it is expressed in writing and registered if so required by the law relating to registration of documents and is made out of natural love and affection between parties standing in a near relation to each other; or

(2) if it is made to compensate a person who has already done something voluntarily for the promisor, or done something which the promisor was legally compellable to do; or

(3) if it is a promise by a debtor in writing to pay a time barred debt and signed by the debtor, or by his agent authorised to do so. The promise may be to pay whole or part of debt.

Also, in case of a completed gift consideration is not required. Further, consideration is also not required to create an agency.

Example:

1. A saves B's sons from drowning. B promises to pay him ten thousand as reward. This is a contract.
2. B owes A, Rs.5,000 for the last 5 years. The debt is barred by the law of limitation. B promises to pay Rs.2,500. This is a contract provided it is in writing and signed.

Capacity of Parties: One of the essential elements of a valid contract is that all the parties to it must have capacity to enter into contracts. Section 11 of the Contract Act provides that ***"every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject"***.

A person is incapable of entering into contracts, if:

(i) he is a minor;

(ii) he is not of sound mind, i.e., he is a lunatic, an idiot, or a drunkard;

(iii) he is disqualified from contracting by any law to which he is subject; e.g., if he is a foreign sovereign ambassador, alien enemy, convict.

Minor

By virtue of section 11, a minor is incompetent to contract. But the Indian Contract Act is conspicuous by its silence about the nature of a minor's contract. It is thus not clear as to whether a minor's contract is void or voidable. Up to 1903, there was a great controversy among High Courts in this connection. This controversy was finally resolved by the Privy Council in 1903 in ***Mohori Bibee v. Dharmodas Ghose (1903) 30 Cal. 539).*** The Privy Council held that as a minor's contract is void, any money advanced to a minor cannot be recovered.

According to section 3 of the Indian Majority Act, minor is a person who has not completed 18 years of age.

A minor's contract is void and it is immaterial whether father signs on behalf of minor or gives an undertaking that the minor would act or perform the contract. The Privy Council held that **guardian cannot contract on behalf of minor**. However, this rule was subsequently modified by the Privy Council in ***Sri kakulam Subramanyam v. Kurra Subba Rao.*** The Privy council entertained no doubt that it was within the powers of the mother of a minor as a guardian to enter into a contract of sale for the purpose of discharging his father's debts. Thus, if the court finds that **the contract has been entered into for the benefit of the minor, it would be declared valid**.

When a guardian enters into a contract on behalf of a minor, the validity of the contract depends on whether the guardian is acting within the scope of his legal powers or not. The Privy Council, in the case of ***Mir Sarwarjan v. Fakhruddin,*** held that the guardian's contract can neither be enforced against the minor nor be enforced against him. The Privy Council applied the doctrine of mutuality. The rights of both parties to the contract should be equal. The Doctrine of Mutuality has been expressly superseded with the Specific Relief Act, 1963. The validity of the guardian's consent, therefore, should be considered only with reference to his legal powers.

Furthermore, **there can be no estoppel against a minor.** So, even when a minor misrepresents that he is a major and thereby induces another to enter into a contract, it cannot be enforced against him as he is not estopped from setting up his minority as a defence.

The provision relating to the position of necessaries supplied to a minor occurs under section 68 of the Indian Contract Act, 1872.

The rule of law is clearly established that an infant is generally incapable of binding himself by a contract. But to this rule, there is an exception introduced not for the benefit of the tradesman who may trust the infant, but for that of the infant himself. This exception is that he may make a contract for necessaries.

Section 68 claim for necessaries supplied to person incapable of contracting or on his account : *If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.*

Rules/Effects as to or Nature of Minor's Agreements

1. ***Void ab initio :*** *Minor's agreement is absolutely void from very beginning i.e. void* ***ab initio.*** *It is nullity in the eye of law. An agreement with minor, there fore, can never be enforced by law.*
2. ***Minor can be a promisee or beneficiary :*** *A minor can enforce such agreements in which he is a beneficiary or promisee and does not create any obligation on his part.*
3. ***No ratification :*** *A minor's agreement is void ab initio. Hence, it cannot be rafified even after attaining majority.*
4. ***Restitution/Compensation possible :*** *Restitution means restoring or returning the benefits received. Now the doctrine of restitution applies to minor. If a minor has received benefit under an agreement from the other party.*
5. ***No estoppel and can plead minority :*** *The rule of estoppel says that when a person by written or spoken words or by his conduct faslsely represents another to believe that certain state of things exists, he will not be allowed to deny the existence of that state of things. A minor is not bound by the rule of estoppel. A minor can always plead his minority.*
   Aggrieved party cannot sue because enforcement of a void agreement is not possible.
6. ***No specific performance :*** *The Court does not order for specific performance of a void agreement. [Mirsarwarjan v. Fakhruddin (1912) 3 Cal 232]*
7. ***Contract by parent/guardian/manager :*** *A minor's parent/ guardian/ manager can enter into contract on behalf of the minor provided :*
   (i) The parent/guardian/manager acts within the scope of his authority; and
   (ii) The contract is for the benefit of the minor.
8. ***No liability of parents :*** *The parents (guardian) of a minor are not liable for agreements made by their minor ward.*
9. ***Minor agent :*** *A minor can be appointed as an agent by any person competent to contract.*
10. ***Minor partner :*** *A minor can be admitted to the benefits of an existing firm with the consent of all the partners. He can be a partner in the profits of a firm but not partner of the firm.*
11. ***Guarantee for and by minor :*** *A minor cannot be a surety in a contract of guarantee.*
12. ***Minor and insolvency :*** *He cannot be adjudged insolvent. He is not personally liable even for the dues of necessaries of life supplied to him.*
13. ***Minor as joint promisor :*** *A minor can be a joint promisor with a major, but the minor cannot be held liable under the promise to the promisee as well as to his co-promisor.*
14. ***Minor shareholder :*** *A minor cannot apply for allotment of shares in a company as he is not competent to contract.*

15. ***Minor and Negotiable Instruments Act :*** *A minor can draw, make, negotiate or endorse any negotiable instrument (i.e. cheque, P/N, B/E etc.) but will not be personally liable under any such instruments.*
16. ***Service contract :*** *A contract of personal service by minor is void. A contract in which a minor is beneficiary can be enforced only when he has performed his promise under the contract.*
17. ***Contract of apprenticeship :*** *A contract of apprenticeship if beneficial for the minor, can be made and enforced by the minor's guardian under the Indian Apprenticeship Act, 1961.*
18. ***Minor as trade union member :*** *Any person who has attained the age of fifteen years may be a member of registered trade union provided the rules of the trade union allows so. Such a member will enjoy all the rights of a members.*
19. ***Marriage contract :*** *Contract of marriage of minor by their parents/guardian has been held to be valid and in the interest of minor on the ground of the customs of the community. Courts may apply the prevailing personal law of the community concern to which the minor in the case belongs.*
20. ***Liability for tort :*** *A minor is liable for a tort, i.e. civil wrong committed by him.*
21. ***Liability for necessaries of life :*** *A minor is incompetent to contract. A minor therefore, is not personally liable for the payment of price of necessaries of life supplied to him or to his legal dependents.*

According to Lord Fletcher Moulton L.J., ***"the basis of the action is hardly contract. Its foundation is an obligation which the law imposes on the infant to make a fair payment in respect of the needs satisfied."*** *[Nash v. Inman (1908) 2 KB 1]*

Unsoundness of Mind : *A person is said to be of sound mind for the purpose of making a contract, if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.*

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind. A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Illustrations

(a) A patient in a lunatic asylum, who is, at intervals, of sound mind, may contract during those intervals.

(b) A sane man, who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

A contract entered into by a person who at that time was of unsound mind is void. Mere weakness of mind does not amount to unsoundness of mind. In English law in order that a person may avoid contract on the ground of insanity, it is not only necessary to show that he was insane at the time of entering into the contract, but it is further necessary for him to prove that the other party knew him to be so insane as not to be capable of understanding what he was about.

Imbecility: An imbecile person is one who has no understanding from his infancy. Contracts entered into by such persons, other than those for necessaries, are void.

Burden of Proof relating to Unsoundness and Imbecility: The question of unsoundness and imbecility is to be determined not upon wire drawn speculations but upon tangible and unmistakable facts. Normal presumption is in favour of sanity. **The onus of proving insanity is on person who alleges it**. The question whether a person is of unsound mind at the time of execution of a document is a question of fact.

Drunkenness : Drunkenness is a ground for avoidance of contract but in order to be so it must be so excessive and absolute as to suspend the reason for a time and create impotence of mind, and it must be distinguished from that "merriment of a cheerful cup which rather revives the spirits than stupefies the reason". It means that if a person has drunk something which just revives his spirits and he has not lost his logical capacity. So, it has been held that although a mortgagor may have been drinking hard and frequently of unsober and unsound mind, a mortgage deed executed by him is good and validly executed unless it is established that at the time the deed was executed, he was of unsound mind. A contract by a drunken person is voidable only and not void and so it may be ratified by him when he is sober.

Old Age: Mere loss of memory is not sufficient to constitute unsoundness of mind as such loss of memory, on its own, does not render any person unable to manage his own affairs. It has been held that loss of memory and absent mindedness is not inconsistent with the acts of a sane man. Therefore, even an extremely old man with declining strength of mind and body may be deemed fit to contract if he could exercise an independent and intelligent mind over what he is doing. With ageing, there results a natural vacuity of mind, but it cannot be said that such a person has become of unsound mind unless it can be proved that his mind has become completely blank. In such cases, the onus is on the one who alleges unsoundness of mind to prove that he has become unable to understand his own affairs and form rational judgements.

Intoxicated Persons : The authorities are scanty; but in **Gore v. Gibson (1845),** it was held that a contract made by a person so intoxicated as not to know the consequences of his act is not binding on him if his condition is known to the other party. It appears, however, that such a contract is not void but merely voidable, for it was held in *Matthews v. Baxter* (1873) LR 8 Ex 132 that if the drunken party, upon coming to his senses, ratifies the contract, he is bound by it.

Delirious Persons : A person delirious from fever is also not capable of understanding the nature and implications of an agreement. Therefore, he cannot enter into a contract so long as delirium lasts.

Hypnotised persons : Hypnotism produces temporary incapacity till a person is under the effect of artificial induced sleep.

Effect and Burden of Proof

1. *The agreements made by a person of unsound mind are absolutely void. If agreement is for his benefit, it can be enforced.*
2. *Agreements made by such a person for buying necessaries of life for himself or his dependent (e.g. wife, children, minor, sister etc.) are valid as quasi-contract under Section 68.*
3. *The contracts made by the guardian of a lunatic (appointed under the Lunacy Act) on his behalf can be enforced and his estate is liable for the same.*
4. *Law presumes that all persons are of sound mind unless otherwise proved.*
5. *If unsoundness of mind is once established, the burden of proving a lucid interval is upon him, who establishes it.*

Contract by Persons Incompetent by Statute :

1. An alien is a citizen of a foreign state. An alien may be a friend or an enemy. Contracts with alien friends are valid. But contracts with alien enemies are void. An alien enemy is one whose country is at war with India. Foreign Sovereigns and Ambassadors cannot be sued in Indian Courts unless they voluntarily submit to our courts.

2. A convict is incapable of entering into contracts while undergoing sentence.

3. Corporations: A corporation is an artificial person created by law and has no physical existence. There are some contracts into which it cannot enter e.g., a contract to marry further, the owners of a corporation to contract are limited by its Statute, Charter or Memorandum of Association. Any contract beyond such powers is void.

4. Foreign Sovereigns, diplomatic staff etc : They have full capacity to contract in India but they can clam their privilege of not being sued.

5. Insolvents : An Adjudged insolvent cannot enter into contract of sale of property. But he can make service or loan contracts. And after getting certificate of discharge, he can enter into any contract as a normal person.

6. Women : A woman (whether married or not) can enter into contract and sue and be sued in her own capacity with respect to her property (Stridhanam) provided she is otherwise competent to contract. Even husband and wife can enter into a valid contract. They can sue each other because they are independent persons and have separate legal identify. A wife has implied authority from her husband for making contract for buying necessaries of life. But a husband has no such authority.

No husband can be held liable for the contract made by his wife unless he allows her to act as his agent either with express or implied authority.

It should be noted that every **barrister, advocate of doctor now has a right to contract and sue for his fee.**

Free Consent

Section 10 of ICA 1872 stipulates that **"all agreements are contracts if they are made by the free consent of the parties of the contract"**

In other words, an agreement becomes a valid contract only when it is the result of the free consent of all parties to it. Thus one of the essential elements of a valid contract as highlighted in Section 10 is that the parties should enter into the contract with free consent. The foundation of every contract is the free consent of the parties which is the yardstick for measuring the validity of the contract.

Consent

Section 13 defines the term consent. According to this Section, **"two or more persons are said to consent when they agree upon the same thing in the same sense." (Consensus ad idem)**

Section 14 stipulates when consent is said to be free – when it is caused by:

- **Coercion – Section 15**
- **Undue Influence – Section 16**
- **Fraud – Section 17**
- **Misrepresentation – Section 18**
- **Mistake – Sections 20 to 22**

Effect of flaw in consent – absence of free consent and its effect on contract

- ***Section 19*** *of the ICA deals with the effect of flaw in consent caused by coercion, fraud, and misrepresentation while* ***Section 19A*** *deals with flaw in consent due to undue influence. It may be noted that there is a distinction between the flaw in consent due to coercion, fraud, and misrepresentation and that caused by mistake. In case of mistake the contract is void but in other cases, the contract is voidable at the option of the party whose consent was caused.*
- ***According to Section 19*** *when consent to an agreement is caused by coercion, fraud, and misrepresentation– the agreement is a contract voidable at the option of the party whose consent was caused. Until then the contract is valid. A party to contract whose consent was taken by coercion, misrepresentation, and fraud may also, if he thinks fit, insists that the contract shall be performed.*
- *In case of fraud, apart from avoiding the contract, the person whose consent has been so caused may also bring an action for damages because fraud is considered a kind of tort. When a person at whose option the contract is voidable rescinds it , he is bound to restore the benefit if any received by him under such a contract.*
- ***According to Section 19 A*** *when consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent has been so caused. Any such contract may be set aside either absolutely or upon such terms and conditions as the Court may deem fit.*

Elements Vitiating Contract

(A) Coercion

According to Section 15 : Coercion is the committing or threatening to commit any Act by the IPC or the unlawful detaining or threatening to detain any property to the prejudice to any person, whatever, with the intention of causing any person to enter into an agreement.

Essentials Features of Coercion

(i) Committing of any acts forbidden by the IPC

(ii) Threatening to commit any Act forbidden by the IPC.

According to the **Explanation of Section 15** for coercion, it is not necessary that the IPC should be applicable at the place where the consent has been so obtained. The Explanation expressly states that it is immaterial whether the IPC is or is not in force in the place where coercion is employed.

For Example : A, an Indian citizen on board an English ship on the high seas, has caused B, another Indian, to enter into an agreement by an Act amounting to criminal intimidation under the IPC. A afterwards sues B for breach of contract in Calcutta. A has employed coercion even though the provisions of sections 503 and 506 of IPC relating to criminal intimidation was not in force in the place where the Act was done (Ship).

(a) Unlawful Detaining of Property : According to Section 15 coercion could also be caused for the unlawful detaining of any property to the prejudice of any person with the intention of causing any person to enter into an agreement. It may however be noted that if the detention of property is not unlawful, then there is no coercion. **Mothiah vs. Muthukarupan Chetti**, an agent appointed by a person to maintain books of accounts refuses to hand down the books of the principal until the principal agrees to release him from all his past liabilities. The principal gave such release. It was held that the release was obtained by coercion and hence not binding.

(b) Threatening to Detain Any Property : Section 15 also includes threatening to detain any property to the prejudice of any person with a view to cause to any such person to enter into an agreement.

(c) To the prejudice of any person under Section 15 : According to Section 15–the Act amounting to coercion need not necessarily be direct against the contracting party. It is enough if the act is to the prejudice of any person who has committed with the intention of causing any person to enter into an agreement.

Illustration : A wrongfully confines B's son C in order to coerce B into entering into an agreement. This will fall under Section 15.

Moreover it may not be necessary that the wrongful act committing coercion should proceed from the party to the contract. The principle relating to threat under the English Common Law is known as Duress. Duress involves actual or threatened violence to the body of the party to the contract or someone merely related to him. Thus, the common law recognizes only a threat to a man's person and not to his goods to constitute duress. This is different from Indian law, where Section 15 of the ICA recognizes unlawful detention or a threat to detain property as coercion. In other words, the Indian law is much wider than the English Law in regard to coercion and the threat relating to detention of both person and property.

(d) Threat to suicide amounts to coercion. An attempt to commit suicide is an offence under the IPC but it is not punishable. But threat to commit suicide amounts to coercion.

(e) Intention must be to compel other party to enter into the contract: If any act is done to compel someone to enter into the contract then it would amount to coercion otherwise not.

(f) Coercion may proceed either from a party or from a stranger: it may proceed from the party to the contract or the stranger himself.

(g) Coercion may be directed against the party to the contract or any other person who is a stranger.

Note : It should be noted that the place of coercion is immaterial.

Threats which do not amount to Coercion	Threats which do not amount to Coercion
• Threat to sue • Statutory compulsion • Threat to strike • Detaining property under mortgage	• Contract is treated as voidable • Restitution is available

Burden of proof; Burden to prove the coercion lies on the party who wants to avoid the contract.

Threats whichdo not amount to Coercion:
- *Threat to sue*
- *Statutory compulsion*
- *Threat to strike*
- *Detaining property under mortgage*

Effects of Coercion;
- *Contract is treated as voidable*
- *Restitution is available*

Burden of proof; Burden to prove the coercion lies on the party who wants to avoid the contract.

Undue Influence

Section 16 of the act defines undue influence as " a contract is said to be 'induced by undue influence' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other " – vide **Section 16 (1)**

Essential Features :

i. A **relation** subsists between the parties whereby one of them is in a position to **dominate** the will of the other,

ii. The dominant party **uses his superior position** to obtain an **unfair advantage** over the other.

Situations/Cases

The question whether a party was in a position to dominate the will of the other is a primarily a question of fact. In particular, a person is deemed to be in a position to dominate the will of the other in the following cases:

a. Where one person **holds a real or apparent authority** over the other. For example – employer-employee, master-servant.

b. Where one person stands in a **fiduciary relation**, that of mutual trust and understanding, to the other.

When a person reposes confidence in another, it is expected that he will not be betrayed. If that person betrays the confidence and trust imposed in him by virtue of the fiduciary relationship and thereby gains an unfair advantage over the other party in any contract, the aggrieved party has an option to avoid the contract. Typical examples of fiduciary relationships are –Parent – child, Guardian – ward, Doctor – patient, Solicitor – client, Trustee – beneficial, Principal – agent, Partners inter se, Landlord – tenant

Where one person makes a contract with a person whose **mental capacity is either temporarily/permanently affected** by reason of **age / illness or mental or bodily distress – vide Section 16 (2)(b)**

Presumption of Law & Burden of Proof

According to Section 16 (3) the burden of approving that such a contract was not induced by undue influence shall lie upon the person who is in a position to dominate the will of the other party. **Such an undue influence is also known as "moral coercion".**

In **Lancashire Loans Ltd. vs Black 1934 :** It was held that a daughter may not necessarily be independent and may be under the influence of the mother.

Presumption is raised in the following cases:

(a) **Unconscionable Bargains: Wajid Khan vs Raja Ewaz Ali Khan 1891 :** An old illiterate woman conferred upon her managing agent a bug pecuniary benefit without any valuable consideration under the guise of a trust. This was held to be under undue influence.

(b) **Inequality in bargaining power : Lloyd's Bank vs Bundy:** Farmer pledged his farmhouse for securing a loan for his son. Later bank tried to take possession of the house. It was held that the contract might have been done under undue influence.

(c) **Contracts with Pardanashin Women :** A contract with a Pardanashin woman is presumed to have been induced by undue influence. However, such a woman must be totally secluded from ordinary society. In the case of **Ismail vs Amir Bibi 1902**, a lady stood as witness, put tenants, collected rents in respect of her house. She was held not a Pardanashin woman.

High rate of Interest : The mere fact that the rate of interest is very high in a money lending transaction is not necessarily against equity and good conscience because it is usual for money lenders to charge high rate of interest from needy borrowers.

Illustration : A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make loan except at an unusually high rate of interest. A accepts the loan on their terms. This transaction is in the ordinary course of business and the contract is not induced by undue influence.

But if the rate of interest is very exorbitant, and the court regards the contract as of having no conscience, in such a case it is for the creditor to prove that no undue influence was employed.

No Presumption PF Dominant Position	Effect of Undue Influence
• Husband and wife (excluding Pardanashin lady) • Creditor and Debtor • Landlord and Tenant • Principal and Agent	• Voidable contract • Absolute rescission by the court • Conditional rescission by the court

No presumption of Dominant position:
- *Husband and wife (excluding Pardanashin lady)*
- *Creditor and Debtor*
- *Landlord and Tenant*
- *Principal and Agent*

Effect of Undue influence:
- *Voidable contract*
- *Absolute rescission by the court*
- *Conditional rescission by the court*

Fraud

Section 17 of the Act defines fraud as –**"Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agents, with intent to deceive another party thereto his agent, or to induce him to enter into the contract.**

According to Explanation to Section 17 – the mere silence as to a fact likely to affect the willingness of a person to enter into a contract is not fraud. However, such silence is to be held as fraud, if the circumstances of the case that –

- It is the duty of the person keeping silence – to speak
- That his silence in itself is equivalent to speech.

Essentials of Fraud

Analysing the definition of fraud under **Section 17**, we get the following essential elements of fraud

1. Party to the contract

The Act of fraud must be done:

- By the party to the contract himself
- With his connivance
- Or by his agent

2. There must be a false representation or assertion – Section 17 (1)

To constitute fraud there must be conjugation of 2 things:

- A representation or assertion of a fact which is not true and
- The person making such representation or assertion of fact does not believe it to be true.

This is what is meant by suggestion falsi or suggestion of falsehood coupled with the knowledge of its falsity.

3. There must be active concealment of fact – Section 17 (3)

By active concealment of certain facts there is an effort to see that the other party is not able to know or discover the truth. He is made to believe something is true whereas that is false. This is known as SUPPRESIO VERI or suppression of fact purposefully. The implication of such active concealment is graver where it is the duty of the person to disclose – fiduciary relationship. Active concealment is different from passive concealment. Passive concealment merely means silence as to material facts. However, active concealment means making efforts to prevent the facts from reaching a party and this is fraud.

Illustration: B having discovered a vein of iron ore in the estate of A adopts means to conceal and is successful to conceal the existence of the ore from A. Through A's ignorance he buys that estate at an under value.

It is a voidable contract under Section 2(i) of the Act. So, A may cancel the contract because it is a fraud committed against him by B. The fraud is a fraud of concealment of fact.

4. A promise made without the intention of performing it – Section 17(3)

When a person makes a promise then it is deemed to be an undertaking by him that he will perform the promise. According to Section 17(3) if there is no such intention to perform the contract, at the time when the contract was made, it amounts to fraud. **DDA vs Skipper Construction Company 2000-** A builder collected deposit money from a greater number of

people than there were flats. SC held that since the builder knew that he cannot perform his promise and still took the money, he was doing fraud. He was held liable to pay interest even though there was no provision of interest on deposit.

5. Any other Act fitted or designed to deceive – Section 17(4)

This provision is general in nature and is intended to include other means of trick and unfair means intended to deceive anyone other than by means of *suggestio falsi, suppresio veri* or a promise made without the intention to perform it. Under this Section, any such acts will amount to fraud.

6. Any such acts of omission as the law specially declares to be fraudulent-Section 17(5)

According to Section 17(5) fraud includes any such acts of omission which specially declares it to be fraudulent. For instance, under the TP Act 1882, under Section 55, the seller of immovable property is bound to disclose to the buyer all material latent defects in the property. Not doing so will amount to fraud.

1. Representation must relate to a fact : The representation, assertion, intention, or suggestion under Section 17(1) must relate to a material fact. Any superfluous opinion or exaggerated statement or flourishing description are not regarded as representation of facts.

Illustration: A while selling rings to B says – "the rings are as good as that of Y." This is a mere statement of opinion which cannot be regarded as amounting to fraud.

2. Wrongful Intention : To constitute a fraud it is necessary that a person should intentionally make a false statement to deceive another party and thereby induce him to enter into a contract. If the intention to deceive the party is absent, there is no fraud – vide case of DERRY vs. PEEK.

3. The acts must have in fact, deceived the party : A mere attempt to deceive the party is not fraud under the ICA unless the party is actually deceived. Fraudulent misrepresentation must have been made with an intention to deceive. According to the explanation appended to Section 29 of the act, deceit which does not deceive does not amount to fraud and cannot hence make the contract voidable.

4. The other party must suffer loss : To constitute a fraud, under the ICA, it is necessary that the other party must have suffered some material loss as a consequence of the deceit. Hence, there is no fraud without damage.

Mere silence / non-disclosure vis-a-vis Fraud

In order to constitute fraud, there must be a false representation or assertion of a fact – vide **Section 17(1).** In other words, there could be **suggestio falsi** coupled with the knowledge of its falsity.

Active concealment of a fact has also been considered as amounting to fraud because in that case there is a positive effort to conceal the truth from the other party. He is made to believe as true that fact which is false. This is what is known as **suppresio veri – vide Section 17(2).**

At the same time, it may be mentioned here that explanation to Section 17 lays down that mere silence as to facts does not amount to fraud. It states that – mere silence as to facts does not amount of fraud unless it is the duty of the person keeping silence to speak or when his silence is equivalent to speech.

Exception to The Rule – Mere Silence / Non-Disclosure Amount to Fraud

Explanation to Section 17 mentions that mere silence or non-disclosure does not amount to fraud, other than certain statutory exceptions:

1. When there is a duty to speak keeping silence is fraud.
2. When silence itself is equivalent to speech.

1. Duty to Speak

(a) Contract of Uberrimae Fidei : There are certain contracts which are contracts of **Uberrimae fidei meaning contracts of utmost good faith**. In such a type of contract it is supposed that the party in whom good faith is reposed, would make full disclosure of it and not keep silent.

(i) One instance of contract of Uberrimae fidei is contract of insurance. In such a contract, there may be certain facts which are in full knowledge of the insured or policy holder. He must make full disclosure of such facts to the insurer or insurance company.

In **V. Srinivasa Pillai vs. LIC of India** it was **held** in this case by the Supreme Court that contract of insurance being one of **Uberrimae fidei**, it is normal to expect in such a contract utmost good faith on the part of the insured. The insured is expected to answer certain questions by the insurer, and it is his responsibility to give true and faithful answers. If the insured has knowledge of certain facts which others cannot ordinarily have, then he should not indulge himself in ***suggestio falsi or suppresio veri.***

When in the case of contract of insurance, where there exists a duty to disclose, then non-disclosure of facts that are non-material to and having no bearing on the risk undertaken by the insured, it does not render the contract voidable.

(ii) Contracts for sale of immovable property : In such contracts, buyer as well as seller is under a duty to disclose all material facts.

(iii) Allotment of Shares : When a company issues shares to the public, it issues a prospectus. Every prospectus issued by a company to the public is an invitation to the public to subscribe shares in the company.

(iv) Contracts of marriage : Every party in a marriage contract is under a duty to disclose all the material facts.

(v) Contracts of family settlement : Each member of family is under a duty to disclose all material facts (i.e. as to property etc.) at the time of family settlement.

(b) Fiduciary relationship - Another instance where a duty to disclose facts arises is where the parties to the contract repose "trust and confidence",each other giving rise to a fiduciary relationship.

Illustration: A sells a horse to B, his daughter by auction, who has just come of age. Here the relationship between the parties would make it the duty of A to disclose that the horse is unsound. If he does not disclose so, it would amount to fraud.

(c) Speaking Half Truth: Subject to statutory exceptions under **Explanation to Section 17** a person keeping silence but if he decides to speak, a duty arises to disclose the whole truth. **Withholding a part of the information amounts to fraud.** Thus, speaking half-truths may also amount to wilful misrepresentation as regards to the facts which have not been disclosed. When there is a duty to disclose all facts, then non-disclosure or half-disclosure of facts amounts to fraud.

(d) Statutory Disclosure: In some cases, the disclosure is required by a statute. In such a case also, there arises a duty to speak.

(e) Custom of Trade: If the **usage or custom of trade requires disclosure** of certain things or **known defects** then non-disclosure would amount to fraud. For example, tobacco/liquor is injurious to health.

(f) Contract of partnership : A contract of partnership is also not strictly a contract of uberrimae fidei. It is because every partner is not under a duty to disclose all the material facts which existed before the partnership.

(g) Contract of guarantee : In contract of guarantee the parties are under a duty to disclose all the material facts.

(h) Change in facts before conclusion of the contract : In such a case, the party is under a duty to speak and notify the change to the other party. However, the change must be in the material facts of the contract.

(i) In case of latent defect : Where a product has latent defect (i.e. not visible by ordinary inspection) and the seller has knowledge of it, he will be under a duty to disclose the defect.

2. When Silence is Equivalent to Speech

A person who keeps silence knowing fully well, his silence is going to be deceptive – is no less guilty of fraud. Sometimes, keeping silence as to a certain fact may create an impression as to the existence of such facts. In such a case silence amounts to fraud.

Consequences of Fraud

According to **Section 19** where a consent to an agreement is caused by fraud, the agreement to a contract is voidable at the option of the party whose consent was so caused by fraud. Until such time it is avoided, the contract is valid.

The party defrauded has the following specific remedies:

- To rescind the contract
- To affirm it
- Rescind and claim for damages
- Enforce principle of restitution
- Sue for specific performance

Expansions

- *If the aggrieved party whose consent was caused by fraudulent silence, had the means of discovering the truth with ordinary diligence, the party will not be entitled to rescind the contract.*
- *A fraud which did not cause the consent of the party, on whom fraud was practised, does not render the contract voidable.*
- *Where the party after becoming aware of the fraud affirms or ratifies the contract, then aggrieved party cannot rescind it.*
- *The right of rescission can be claimed within a reasonable time after discovery of fraud.*
- *The right of rescission of contract is lost when a third party acquires rights or interest in the subject matter of the contract for value and in good faith.*
- *When the parties to the contract cannot be placed in the same situation in which they were before the contract was made, the contract cannot be rescinded.*

Misrepresentation

When a false statement is made with the knowledge that it is false and with the intention to deceive the other party and thereby, induce him to enter into a contract on that basis – it is known as **Fraud.** When facts are intentionally misrepresented, under Section 18, it is known as fraud. But when the person making a false statement believes the statement **to be true** and **does not have the intention to mislead or deceive** the other party to the contract – it is known as **misrepresentation.**

If the assertion made later turns out to be untrue but at the time of making the contract the person truly believed that the statement was true, it is known as **innocent misrepresentation**, also dealt with under Section 18.

Ways of Misrepresentation

1. Section 18 (1) states that misrepresentation means and includes – **the positive assertion** in a manner not warranted/justified by the information of the person making it, of that which is not true although he believes it to be true.

Illustration : A while selling his horse to B tells him that the horse is thoroughly sound. A believes that the horse is sound although he does not have sufficient ground to believe so. The misrepresentation made by A falls under Section 18 (1).

2. Section 18 (2) states that misrepresentation means and includes **breach of duty.** Without an intention to receive any advantage or gain to the person committing it by misleading another to his prejudice. In English law, such cases are called **"Constructive Fraud".**

3. Section 18 (3) states that if one party acting innocently causes another party to make a mistake as to the substance of the thing which is the subject of the agreement (that is, the subject matter of agreement) this is said to be misrepresentation.

Essential Elements of Misrepresentation :

1. Misrepresentation must be or must have become a false statement but the person making it must honestly believe in it to be true.
2. The misrepresentation must have been made without any intention to deceive the other party.
3. It must relate to the material facts of the contract.
4. The misrepresentation may be caused by any of the following ways :
   (a) by positive assertion of facts; or
   (b) by breach of duty; or
   (c) by innocently causing another party to make a mistake.
5. Misrepresentation may be caused by representing half-truths.
6. A mere silence is misrepresentation in the following cases :
   (i) where the silence distorts a positive representation.
   (ii) where the contracts are of uberrimae fidei.
   (iii) where a fiduciary relationship exists between the contracting parties.
7. The misrepresentation must have been made before conclusion of the contract.
8. The misrepresentation must have been made for the purpose of inducing another party to make a contract.

9. The other party must have believed in it and acted upon it. In other words, the other party must have been deceived by the innocent misrepresentation.
10. Misrepresentation need not be made directly to a party to the contract. It can also be made to any other person with a view to communicating it to the party.

Effects of Misrepresentation :

- *Voidable Contract*
- *Aggrieved can insist the other party for performance*
- *Restitution*

Exceptions :

1. *If the aggrieved party whose consent was caused by misrepresentation had the means of discovering the truth with ordinary diligence.*
2. *If the aggrieved party gave consent in ignorance of misrepresentation.*
3. *If the party after becoming aware of the misrepresentation, affirms or rotifies the contract.*
4. *If the party has not rescinded the contract within reasonable period of time.*
5. *If third party has acquired rights in the subject matter of contract for value and in good faith.*
6. *If the parties cannot be put to their original position.*

Expression of Opinion

Merely expressing an opinion is not misrepresentation.

Bisset vs Wilkinson 1927 : The seller was aware that the land was being purchased for sheep farming and he expressed an opinion that the land could carry 200 sheep. It turned out that the land was not suitable for sheep farming. The seller was not held liable.

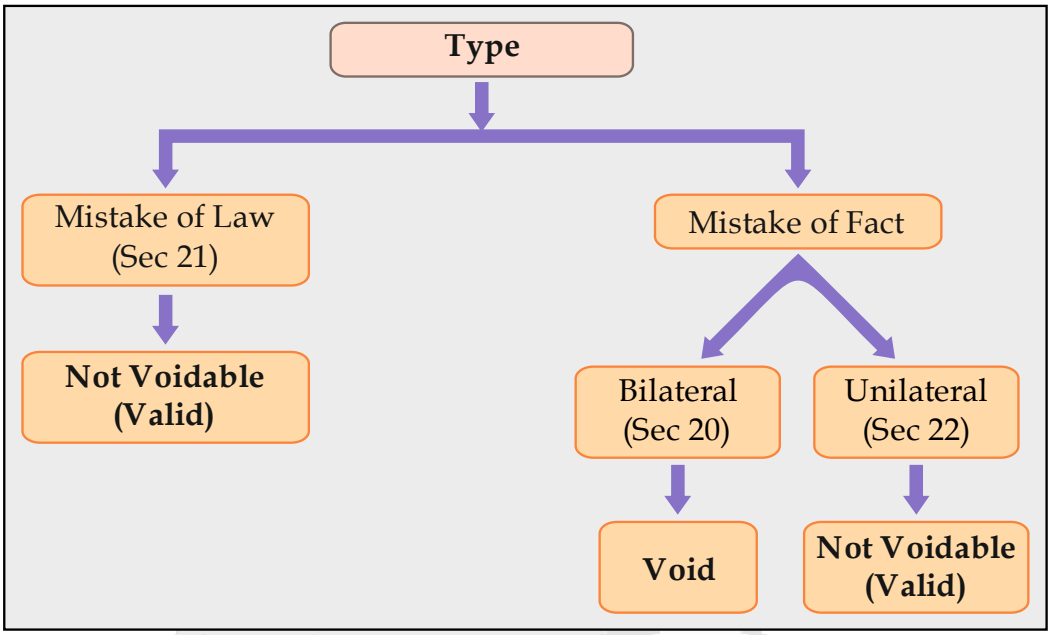
Difference between Fraud and Misrepresentation

	Fraud	**Misrepresentation**
Intention	It is deliberate	It is innocent
Belief	When the person making the representation, knows it to be false	When the person making the representation, knows it to be true.
Consequences	The aggrieved party cannot only rescind the contract but also file suit for damages.	Person can rescind the contract but cannot claim damages.

Mistake

One of the essential elements of formation of a valid contract is that offer, and acceptance should correspond exactly. Both the parties should agree to the same thing in the same sense – that is **consensus ad idem.** Sometimes, one or both parties may be working under some misunderstanding or misconception of some fact relating to the agreement and may even enter into a contract on that basis. Such contracts are said to be caused by mistake. When consent of the parties is caused by mistake it is not free consent.

Types of Mistakes :

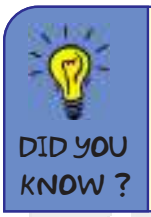


Mistake of Law : The validity of contract is not affected by mistake of law. Where there is a mistake of law, the contract is binding because everybody is supposed to know the law of the land. The maxim which applies in such a case is – **IGNORANTIA JURIS NON EXCOSAT** – which means **ignorance of law is not excusable**.

Illustration : A owes B Rs 1000. Both A and B mistakenly think that the debt is time barred and agree that A may pay only Rs 900 to clear the debt. It is a mistake of law and contract to pay Rs 900 in lieu of Rs 1000 is valid.

It must be noted here that mistake of law here means the general law of the land – Lex loci – and thus a mistake of foreign law is treated as a mistake of fact. The contract in such a case would therefore be void. In other words, **the ignorance of law of the land is not excusable whereas the law of the foreign land is excusable**.

The above principle is embodied in **Section 21** of ICA, states that – a contract is not voidable because it was caused by a mistake as to any law in force in India but a mistake as to any law not enforce in India has the same effect as a mistake of fact.



The Indian Contract Law is widely known as Mercantile Law of India. The main Contract Law is compiled in the Indian Contract Act. This is the most widely used and practiced form of legal agreements in India.

1. Mistake of Fact

A. Bilateral Mistake : Section 20 of ICA deals with mistake as to matter of fact essential to the agreement. According to this Section, where both the parties to an agreement are under the mistake as to matter of fact essential to the agreement – the agreement is void.

Thus, a mistake will render the agreement void if the following conditions are satisfied:

- Both parties to the contract are under a mistake
- Mistake should concern a matter of fact
- The fact regarding which the mistake is made should be essential or fundamental to the agreement.

Illustration : A and B make an agreement for the sale and purchase of a particular horse. Unknown to the fact of both parties, the horse was dead. Both parties are under a common mistake concerning an essential fact relating to the subject matter of the agreement and the contract is rendered void.

Bilateral mistakes can be further classified into two types

(i) Mistake as to subject matter : Where both the parties are under mistake as to subject matter of the agreement, the agreement is void.

(ii) Mistake as to identity of subject matter : Where both the parties are at a mistake as to identify of the subject matter, the agreement is void.

(iii) Mistake as to existence of subject matter : Where the quality of the subject-matter is material to the agreement and if it is substantially different from what the parties intended to be, the agreement is void.

(iv) Mistake as to quantity : If both the parties are under a mistake as to quantity of the subject matter of the agreement, the agreement is void.

(v) Mistake as to price : If both the parties are working under a mistake as to the price, the agreement is void.

(vi) Mistake as to title : Sometimes the parties are under a mutual mistake as to title to the goods sold. In such a case, there is nothing with the seller to transfer. Therefore, the agreement for sale of such goods or property is void.

(vii) Mistake as to existence of state of affairs : If there is a mutual mistake as to the existence of a particular state of affairs, the agreement is void.

(viii) Mistake as to possibility of performance : In such a case, the contract is void on the ground of bilateral mistake as to the possibility of performance. **The impossibility may be of two types :**

(a) Physical impossibility

(b) Legal impossibility

B. Unilateral Mistake : Mistake by one of the parties to a contract does not normally affect the validity of the contract. The provision in this case is envisaged in Section 22 of the ICA. **Section 22** provides that a contract is not voidable merely because it was caused by one of the parties to the contract being under a mistake as to a matter of fact.

Illustration : A buys an old painting for Rs 5000 thinking it is an excellent piece of art. Actually, the painting is a new one worth Rs 800. A cannot avoid the contract on ground of mistake since mere error of judgment will not make it sufficient to invalidate the contract.

Exceptions : In case of unilateral mistake if one party to the contract is mistaken about some fundamental fact concerning the contract, and the other party is aware of this – then the contract may also be avoided. The general rule is that a bilateral mistake alone would render the contract void, but unilateral mistake does not invalidate the contract except under some certain exceptions.

i. Mistake as to identity of person contracted with where such identity is essential to the contract : Cases of unilateral mistake are mainly concerned with mistake of one party as to the identity of person contracted with, where such identity is essential to the contract. For instance, where A intends to contract with B only but finds that he has contracted with C, then there is no contract since identity of B is essential to the contract. On such a case, notwithstanding the unilateral mistake, the contract becomes void.

ii. Mistake as to identity of attributes of contracting party : Sometimes the parties are face to face but one of the parties fails to identify the attributes of the contracting party or person.

iii. Mistake as to the nature of the contract : When one of the parties makes a mistake as to the nature of contract, it is also void. Such a mistake may be caused due to some physical or mental weakness or illiteracy of the party or due to some fraudulent act of the other party.

Lawful Object or legality of object/Consideration

An agreement will be unlawful and so void and unenforceable if its object or the consideration is unlawful. The expression "object of an agreement" means its 'purpose' or 'design'.

Consideration means something for something (Quid Pro Quo).

Illustration :

(a) A and B enter into an agreement for the division between them of gains acquired by them by fraud. The agreement is void as its object is unlawful.

(b) A promise to obtain an employment for B in Government service and B promises to pay Rs.1,000 to A. The agreement is void, as the consideration for it is unlawful.

According to Section 23 of the Contract Act the consideration or object of an agreement is unlawful in the following cases :

1. If it is forbidden by law. An act or an undertaking is forbidden by law when it is punishable by the criminal law of the country (Indian Penal Code) or when it is prohibited by special legislation or regulations made by a competent authority. If the consideration or object is forbidden by law (i.e. illegal) the agreement is void and will not be enforced by the Court. For example, a loan granted to the guardian of a minor to enable him to celebrate the minor's marriage in contravention of the Child Marriage Restraint Act is illegal and cannot be recovered back.
2. If it is of such a nature that, if permitted, it would defeat the provisions of any law. For example- An agreement by the debtor not to raise the plea of limitation, if a suit has to be filed is void as it tends to limit the provisions of the Limitation Act.
3. If it is fraudulent. An agreement whose object is to defraud others is void. For example, where A, a debtor transfers his property to B with the object of defeating his creditors, the transfer is invalid and will be set aside at the instance of the creditors affected.
4. If it involves or implies injury to the person or property of another. Thus, if the object of an agreement is to injure the person or property of another, it is void.
5. If the Court regards it as immoral. An agreement whose object is immoral or where the consideration is immoral is void. For example. A who is B's Mukhtyar, Promises B to exercise his influence in favour of C and C promises to pay Rs.1,000 to A. The agreement is void because it is immoral. A knowingly lets his house to B, a prostitute, for prostitution. The agreement is immoral, and A cannot recover the rent.
6. If the Court regards it as opposed to public Policy. An agreement which is injurious to the public or is against the interests of the society is said to be opposed to public policy.

Agreements against Public Policy

The following agreements have been held by courts of law to be against public policy, and so void.

1. Trading with the enemy. An Indian national cannot trade with an alien enemy without a license from the Government. An agreement with an alien enemy is illegal, void and inoperative.
2. Agreement interfering with the course of justice agreement for stifling prosecution is unlawful and void when an offence has been committed by a person, he must be prosecuted. Any agreement which seeks to prevent the prosecution of such a person is opposed to public policy and is unlawful. Similarly, an agreement to vary the statutory period of limitation is void. Also, an agreement for the purpose of using improper influence of any kind with judges or officers of justice are void.
3. Agreements for sale of public offices and titles. Transfer of public offices and titles is against public policy and invalid. Agreement to transfer office from one person to another or to secure an office of honour or title for monetary consideration is totally bad and unlawful.
4. Agreements tending to create monopolies. These are void as opposed to public policy. Also, agreements not to bid at an auction sale will be unlawful if made with the object of defrauding a third party.
5. Agreements creating an interest opposed to duty are void. For example, an agreement by an agent whereby he would be enabled to make secret profits is void. An agreement by a newspaper proprietor not to comment on the conduct of a particular person is void as opposed to public policy.
6. Agreements restraining personal freedom. An agreement which unduly restrains personal liberty is void, as against public policy. An agreement by a debtor to do manual work for the creditor so long as the debt is not paid in full is void.
7. Agreement restraining parental rights. According to law, the father is the natural guardian of his minor child and in the absence of the father, the mother is the guardian. This right cannot be deprived away by any agreement. An agreed to transfer guardianship of his two minor sons to B and agreed not to revoke this transfer. But later, he changed his mind and wanted his sons back. It was held by the court that he could get back his sons as the agreement was void as being against public policy. Similarly, an agreement to receive money for giving a daughter in marriage is void.
8. Agreement interfering with marital duties. An agreement which interferes with the performance of marital duties is void as being against public policy. Thus, an agreement to lend money to a woman in consideration of her getting a divorce and marrying the money lender is void.
9. Marriage brokerage or marriage brokerage agreement: An agreement to procure marriage for reward is void as being opposed to public policy. An agreement to pay money to parents or guardian in consideration of his giving his daughter in marriage is void.

The entire position regarding unlawful agreement may be assumed up as: An agreement will be unlawful and so void if it is illegal or immoral or is opposed to public policy.

Void Agreement

An agreement may be void for the following reasons, namely :

1. there being no lawful consideration;
2. contracts by minor or a person of unsound mind;
3. contracts made under a mistake of fact on the part of both parties; and
4. agreements of which the consideration or objects are unlawful.

In addition to these four cases, the contract act expressly declares certain types of agreements to be void vide Section 26 to 30. Such contracts are :

(i) Agreements in restraint of marriage (Sec.26) : Under sec.26 every agreement in restrain of the marriage of any person, other than minor is void. This sec. places a prohibition on all forms of restrain on marriage whether partial or complete. Thus under the sec. a contract limited to not marrying a certain person or a certain class of person will be void. This is not so in English law, where a restraint on marriage is void only if it is absolute, e.g. agreement to marry no one but the promise. An agreement restraining the marriage of a minor, however, is valid under the sec. Now, a Contract of Betrothal too is not considered an agreement in restraint of marriage within the purview of section 26 of the Indian Contract Act because the essential difference between an agreement in restraint of marriage and a contract of betrothal lies in this, that in the latter each party being restrained from marrying anyone except the other, the restraint virtually operates in furtherance of the marriage of both. Thus, a Betrothal Contract is neither in restraint of marriage nor against public policy as held in **Tulshiram v. Roopchand.**

(ii) Agreement in restraint of trade (Sec 27) : Every agreement by which anyone is restrained from exercising a lawful profession or trade or business of any kind, is to that extent void.

All restraints of trade whether partial or total, are void. In England a restraint will be valid if it is reasonable. In India it will be valid if it falls within any of the statutory, or judicially created exceptions. To the extent to which these exceptions are an embodiment of the situations in which restraints have been found reasonable in England, the two laws are identical and not "widely dissimilar". The English law may be a little more flexible as the word 'reasonable' enables the court to adapt it to changing conditions. As LORD WILBERFORCE remarked in **Esso Petroleum Co Ltd v. Harper's Garage (Stourport) Ltd** "the classification (of agreements inn restraint of trade) must remain fluid and the categories can never be closed".

"Profession, Trade or Business"

But the Indian courts have not been rendered entirely sterile in the matter. Thus for example, where it was necessary to do so, the high court of kuchh regarded an agreement to monopolise the privilege of performing religious services as being opposed to public policy and void under section 27, though it may be doubted whether the words "profession, trade or business" as used in the section were intended to cover the religious services of a priest. On the other hand, Allahabad High Court in Pothi ram v. Islam Fatima upheld as valid a restrictive covenant on the ground that the activity restrained was not in the nature of "Profession, trade or business".

"Two landlords in the same neighbourhood, in order to avoid competition, agreed that a market for sale of cattle shall not be held on the same day on the lands of both of them.

The High court said: "It seems us that a landlord who in return for tolls or fees, allows a cattle market to be conducted on his land is not thereby exercising trade or business of selling cattle. He is only a land holder and an agreement on his part not to use the land on a certain day for a certain purpose does not amount to restraint of profession, trade or business".

The Madras High court took the lead provided by the Allahabad High court and came to the conclusion that submission of tenders for the purpose of obtaining a contract is not "a trade or calling".

Exceptions : There are two kinds of exceptions to the rule, those created by the statutes and those arising from judicial interpretations of Section 27.

Statutory Exception

(a) Sale of Goodwill : The only section mentioned in the proviso to section 27 of the contract act is that relating to sale of goodwill. It is thus stated: One who sells goodwill of a business with a buyer to refrain from carrying on a similar business, within specified local limits so long as the buyer, or any person deriving title to the goodwill from him, carries on a like business therein provided that such limits appear to the court reasonable, regard being had to the nature of business.

Provided that such limits appear to the court reasonable, regard being had to the nature of business. Apparently the object is to protect the interest of a purchaser of a goodwill.

Limits of Restraint : The agreement has to specify the local limits of the restraint. The seller can be restraint within certain territorial or geographical limits and the limits must be reasonable. Reasonableness of restrictions will depend upon many factors, for example, the area in which the goodwill is effectively enjoyed and the price paid for it.

The seller can only be restrained from carrying on a similar business and also only for such period for which the business sold is actually carried on either by the buyer or by any person deriving title to the goodwill from him.

(b) Partnership Act : There are four provisions in the partnership act which validate agreements in restraint of trade. Section 11 enables partners during the continuance of the firm to restrict their mutual liberty by agreeing that none of them shall carry on any business other than that of the firm. Section 36 enables them to restrain an outgoing partner from carrying on a similar business within a specified period or within specified local limits. Such agreement shall be valid if the restrictions imposed are reasonable. A similar agreement may be made by partners upon or in anticipation of dissolution by which they may restrain each other from carrying on business similar to that of the firm.

It is necessary for the validity of a restraint under Section 36 or 54 that :

1. The agreement should specify the local limits or the period of restraint, and
2. The restrictions imposed must be reasonable.

An agreement by a retiring partner not to carry on similar business on the land belonging to him and adjoining the factory of the firm, has been held to be reasonable and binding on the persons buying the land from him.

Under Judicial Interpretation

(a) Trade Combinations : It is now almost a universal practice for traders or manufacturers in the same line of business to carry on their trade in an organised way. Thus, there are combinations of ice manufacturers, grain merchants, sugar producers, etc. The primary object of such associations is to regulate business and not to retrain it. Combinations of this kind are often desirable in the interest of trade itself and also for the promotion of public interest. They bring about standardised goods, fixed prices and eliminate ruinous competition. Thus, "regulations as to the opening and closing of business in the market, licensing of traders, supervision and control of dealers and the mode of dealing are not illegal," even if there is incidental deprivation of trade liberty. But the courts would not allow a restraint to be imposed disguised as trade regulations. Thus, an agreement between certain persons to carry on business with the members of their cast only, and an agreement to restrict the business of sugar mill within zone allotted to it, have been held void. An agreement between two companies that one would not employ the former employees of the other has been held to be void by reason of its generality.

(b) Solus or Exclusive dealing agreements : Another business practice in vogue is that a producer or manufacturer likes to market his goods through a sole agent or distributor and the latter agrees in turn not to deal with the goods of any other manufacturer. A producer may, for example, agree to sell all his outputs to one consumer who, in turn, agrees not to buy his requirements from any other source. As long as the negative stipulation is nothing but an ordinary incident of or ancillary to the positive covenant, there is hardly anything obnoxious to Section 27.

Holding the agreement void under section 27, the court said: "It bound the manufacturers from generation to generation; it was unrestricted both as to time and place; it was oppressive; it was intended to create monopoly."

(c) Restraint Upon Employees : RESTRAINT DURING EMPLOYMENT; Agreements of service often contain negative covenants preventing the employee from working elsewhere during the period covered by the agreement. "Trade secrets, the names of customers, all such things which in sound philosophical language are denominated as objective knowledge- these may not be given away by a servant; they are his master's property, and there is no rule of public interest which prevents a transfer of them against the master's will being restrained." A servant may, therefore, be restrained from taking part in business in direct competition with that of employer.

"An agreement of this class does not fall within section 27. If it did, all contracts of personal service for a fixed period would be void. An agreement to serve exclusively for a week, a day, or even for an hour, necessarily prevents the person so agreeing to serve from exercising his calling during that period for anyone else than the person with whom he so agrees."

The law regards marriage and the married status as the ordinary right of every individual, and therefore, every agreement in restraint of marriage of an adult person is void. Thus, no restriction or limitation on a person's right to marry any person is valid.

(iii) Agreement in restraint of legal proceedings (Sec 28) : Section 28 declares the following two kinds of agreements void :

1. An agreement by which a party is restricted absolutely from taking usual legal proceedings, in respect of any rights arising from a contract.

2. An agreement which limits the time within which one may enforce his contract rights, without regard to the time allowed by the Limitation Act.

In this connection, the following points must also be borne in mind:

(a) The Section applies only to rights arising from a contract. It does not apply to cases of civil or criminal wrongs or torts.

(b) **This Section does not affect the law relating to arbitration** e.g., if the parties agree to refer to arbitration any dispute which may arise between them under the contract, such a contract is valid (Exceptions 1 and 2, Section 28).

(c) The section does not affect an agreement whereby parties agree 'not to file an appeal' in a higher court. Thus where it was agreed that neither party shall appeal against the trial court's decision, the agreement was held valid, for, section 28 applied only to absolute restriction on taking the legal proceedings, whereas here the restriction is only partial as the parties can go to court of law alright and the only restriction is that the losing party cannot file an appeal

(d) Lastly, this section does not prevent the parties to a contract from selecting one of the two courts which are equally competent to try the suit. Thus in A. **Milton & Co. vs. Ojha Automobile Engineering Company's Case,** there was an agreement which inter-alia provided- "Any litigation arising out of this agreement shall be settled in the High Court of Judicature at Calcutta, and in no other court whatsoever," The defendants filed a suit in Agra whereas the plaintiff brought a suit in Calcutta. It was held that the agreement was binding between the parties and it was not open to the defendants to proceed with their suit in Agra.

(iv) Uncertain agreements (Sec 29) : Agreement, the meaning of which is not certain, or capable of being made certain, are void. For example, A agrees to sell to B "a hundred tons of oil". There is nothing whatever to show what kind of oil was intended. However, A, who is a dealer in coconut oil only, agrees to sell to B "one hundred tons of oil", then there is a certainty in the agreement.

Similarly, where A agrees to sell B "all the grain in my granary at Ram Nagar", there is no uncertainty to make the agreement void.

Where A agrees to sell to B "my white house for Rs.500 or Rs.1000", there is nothing to show which of the two prices was to be given, thus the agreement is void.

A promises to pay B for his services whatever A himself will think right or reasonable. Later, being dissatisfied with the payment made, B sues A. B's suit will not be admitted by the court because if the performance of a promise is contingent upon the mere will and pleasure of the promisor, there is no contract.

Where goods are sold, the price being payable subject to "hire purchase term' or 'at such price as should be agreed upon between the parties the agreement were held to be void for uncertainty as to price.

An 'agreement to agree in the future' is a void contract, for there is no certainty whether the parties will be able to agree. There cannot be a contract to make a contract. Similarly, an agreement to pay a certain sum with interest after two years "after deductions as would be agreed upon" has been held void for uncertainty.

(v) Agreements by way of wagers (Sec 30) : Agreements by way of wager void- agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide by result of any game or other uncertain event on which any wager is made.

Exception in favour of certain prizes for horse racing : This section shall not be deemed to render unlawful a subscription or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize or sum of money, **of the value or amount of five hundred rupees or upwards,** to be awarded to the winner or winners of any horse race.

Section 294-A of the Indian Penal Code not affected—Nothing in this section shall be deemed to legalize any transaction connected with horse racing, to which the provisions of section 294-A of the Indian Penal Code apply.

Section 30 only says that "agreements by way of wager are void". The section does not define 'wager'. Sir William Anson's definition of 'wager' as a promise to give money or money's worth upon the determination or ascertainment of an uncertain event, brings out the concept of wager declared void by section 30 of the contract act.

Essentials of Wagering Agreement :

1. Uncertain event - Uncertainty in the minds of the parties about the determination of the event in one way or other is necessary. A wager generally contemplates a future event; but it may even relate to an event which has already happened in the past, but the parties are not aware of its result or the time of its happening.
2. Equal chances of gain or loss to the parties. There is no wager if there are no mutual chances of gain or loss, each party should stand to win or lose. If one party wins and there weren't any chances of them losing, then in that case there is no wager. If winning or losing is completely based on skill there will be no wager it should be dependent on chance.
3. Neither party to have control over the event. Neither party should have control over the happening of the event one way or the other. Birdwood J said, "If one of the parties has the event in his own hands, the transaction lacks the essential ingredient of wager".

Lastly, no other interest in the event. Neither party should have any interest in the happening of the event other than the sum or stake he will win or lose.

Effect Of Wagering Transactions: Wagering agreement being void cannot be enforced in any court of law. The Calcutta High Court **(**in **Badridas Kothari v. Meghraj Kothari)** held that although a promissory note was executed for the payment of the debt caused through wagering transaction, the note was held not to be enforceable. Similarly, money deposited with a person to enable him to pay to the party winning upon a wager cannot be recovered. The winner cannot recover the money, but before it is paid to him the depositor may recover from the stake holder. But where the money has already been paid over, it cannot be recovered back.

Wagering Agreement Not Unlawful : It has been laid down by the Supreme Court, in **Gherulal Parakh v.Mahadeo Das** that though a wager is void and unenforceable it is not forbidden by law. Hence a wagering agreement is not unlawful under section 23 of the Contract Act and therefore the transactions collateral to the main transaction are enforceable.

Exceptions

Horse Race : This section does not render void a subscription or contribution, or an agreement to subscribe or contribute, toward any plate, prize or sum of money, of the value or amount of five hundred rupees or upwards to the winner or winners of any horse race.

Crossword Competitions And Lottery : The supreme court of India in B.R Enterprises V. State of U.P. held that even the state sponsored lotteries have the same element of chance with no skill involved in it and it comes under wagering contracts as the very nature of agreement has not changed and thus be void. If chance does not play a role and victory is completely dependent on skill, the competition is not a lottery .Otherwise it is. The Madhya Pradesh High Court in Subhash Kumar Manwani v. State of MP has characterized lotteries as wager and the court held that agreement for payment of prize money on a lottery ticket was held to be coming within the category of wagering agreement as contemplated by section 30.

The principle and purpose behind sec. 30 to treat an agreement by way of wager as void is that, the law discourages people to enter into games of chance and make earning of trying luck instead of spending their time , energy and labour for more fruitful and useful work for themselves, their family and society.

(vi) Impossible Act (Sec 56) :

Types of Impossibility of Performance

The impossibility of performance may be of two types namely,

1. Impossibility at the time of agreement [Sec 56(1)].
2. Impossibility arising subsequent to the formation of contract [Sec 56(2)]

1. Impossibility at the time of agreement : It exists at the time of formation of a contract. It makes the contract void ab initio i.e., void from the beginning. Thus, such a contract does not create any rights and obligations on the contracting parties.

The existence of impossibility at the time of formation of contract may be :

a. Unknown to both the parties, and
b. Known to both the parties.

a. Impossibility unknown to both the parties : Where the impossibility is unknown to both the parties, the contract becomes void when the impossibility is discovered.

b. Impossibility known to both the parties : When the impossibility of performance is known to both the parties, the agreement is void ab initio. It does not create any rights and obligations on the contracting parties.

2. Impossibility arising subsequent to the formation of contract or doctrine of frustration : Section 56(2) lays down the effect of subsequent impossibility of performance. Sometimes the performance of a contract is a quite possible when it is made, but some event subsequently happens which renders its performance impossible or unlawful. For example, after making a contract of marriage one of the parties goes mad or where a contract is made for the import of goods and the import is thereafter forbidden by a government order or where a singer contracts to sing and becomes too ill to do so.

English Law On The Point

In ***Paradine*** *vs.* ***Jane,*** it was pointed out that subsequent happenings should not affect a contract already made. It was held that "When the party by his own contract creates a duty, he is bound to make it good, if he may, notwithstanding any accident by inevitable necessity, because he might have provided against by his contract."

In another case of ***Taylor vs. Caldwell Queen's Bench (1863),*** Blackburn J laid down that the above rule is only applicable when the contract is positive and absolute and not subject to any condition either express or implied. In this case the defendants had agreed to let the plaintiff the use of their music hall between certain dates for the purpose of holding a concert there. But before the first day on which a concert was to be given, the hall was destroyed by fire without the fault of either party.

It was held that the concert was not absolute as its performance depended upon the continued existence of the hall. It was therefore, "subject to an implied condition that the parties shall be excused in case, before breach, performance becomes impossible by the perishing of thing without default of the contractor.

This principle is not confined to physical impossibilities. It extends also to cases where the performance of the contract is physically possible, but the object the parties had in mind has failed to materialize. The well-known coronation case of which *Krell vs. Henry (1903) Al ER Rep 20* is one which illustrates this point.

The defendant agreed to hire from the plaintiff a flat for June 26 and 27 on which days it had been announced that the coronation procession would pass along that place. A part of the rent was paid in advance. But the procession having been cancelled owing to the King's illness, the defendant refused to pay the balance.

It was held that the real object of the contract, as recognize by both contracting parties, was to have a view of the coronation procession. The taking place of the procession was, therefore, the foundation of the contract. The object of the contract was frustrated by non-happening of the coronation and the plaintiff was not entitled to recover the balance of the rent

Thus, the doctrine of frustration comes into play in two types of situations,

1. Where the performance is physically cut off
2. Where the object has failed.

The Supreme Court has held that section 56 will apply to both kinds of frustration.

Specific Grounds of Frustration

"The principle of frustration of contract or of impossibility of performance is applicable to a variety of contracts". It is not possible to lay down an exhaustive list. Yet following are the grounds of frustration

1. **Destruction of Subject-Matter :** The doctrine of impossibility applies with full force "where the actual and specific subject- matter of the contract has ceased to exist".
2. **Unusual Change of Circumstances :** A contract will frustrate "where circumstances arise which make the performance of the contract impossible in the manner and at the time contemplated". This happens when the change of circumstances has affected the performance of the contract to such an extent as to make it virtually impossible or even extremely difficult or hazardous.

3. **Non–Occurrence of Contemplated Event :** Sometimes the performance of a contract remains entirely possible, but due to the non- occurrence of an event contemplated by both parties as the reason for the contract, the value of the performance is destroyed.
4. **Death or Incapacity of Party :** A party to a contract is excused from performance if it depends upon the existence of a given person, if that person perishes" or becomes too ill to perform.
5. **Government or Legislative Intervention :** A contract will be dissolved when legislative or administrative intervention has so directly operated upon the fulfillment of the contract for a specific work as to transform the contemplated conditions of performance.

The effect of an administrative intervention has to be viewed in the light of the terms of the contract, and if the terms show that the parties have undertaken an absolute obligation regardless of administrative changes, they cannot claim to be discharged.

Following are not grounds of frustration :

1. **Where merely performance has been delayed :** Mere delay in performance. When time is not essence of performance, does not lead to the frustration.
2. **Mere commercial hardship (does not) amount to frustration :**
3. **Frustration applies to executory contract and not to executed contract :**
4. Where the parties have in contemplation that there can be delay in the performance,

The delay will not result in frustration.

Theories of Frustration

1. **Theory of implied term :** The theory of implied term was explained by Lord Loreburn in ***F.A Tamplin Steamship Co. Ltd vs. Anglo- Mexican Petroleum Products Co. Ltd.*** It was held that the courts do not have the power to dissolve a contract. But they can examine the circumstances of the contract to see whether the parties contracted on the footing that a state of things would continue to exist. If so, a term to that effect would be implied. If that term fails the contract should be over.
2. **Just and reasonable solution :** In a subsequent case the court really exercise a qualifying power- a power to qualify the absolute, literal or wide terms of the contract- in order to do what is just and reasonable in the new situation.
3. **Indian position :** In deciding cases in India, the only doctrine that is to be seen is that of supervening impossibility or illegality as laid down in section 56 of the contract act taking the word "impossible" in its practical and not literal sense. It must be borne in mind, however that section 56 lay down a rule of positive law and does not leave the matter to be determined according to the intention of the parties.

Effects of Frustration

When there is frustration the dissolution of the contract occurs automatically & both parties are discharged.

1. **Frustration should not be self – induced :** It should not be due to the act or election of the parties. Frustration should arise without blame or fault on either side. The Privy Council held that the frustration in this case was the result of the appellants own choice of excluding the respondents ship from the license and therefore, they were not discharged from the contract.

2. **Automatic Operation of Frustration :** Frustration operates automatically to discharge the contract "irrespective of the individuals concerned, their temperaments and feelings, their interest and circumstances".

This is particularly true of Indian law as sec 56 of the Contract Act lays down rule of positive law and does not leave the matter to be determined according to the intention of the parties. A subsequent case, however, shows that in circumstances frustration may be waived by one party and then the other will be bound by the contract.

The Supreme Court laid down that frustration puts an end to the liability to perform the contract. It does not exterminate the contract for all purposes. Whether the doctrine of frustration would apply or not has to be decided within the framework of the contract and if the contract contains an arbitration clause, the arbitrator could decide the matter of frustration.

(H) Certainty and Possibility of Performance

The agreement must be definite and not vague. If it is not definite then it is not possible to know its meaning.

Therefore, it cannot be enforced. Example: A agree to sell to B "a hundred tones of oil". There is nothing whatever to show what kind of oil was desired. The agreement is void because it is uncertain. Example: Agreed to purchase a motor van from B "On hire purchase terms." The hire purchase price was to be paid over a period of two years. It was held that there was no contract as the terms were not certain about the rate of interest and mode of payment. In addition no particular meaning could be given to the words "On hire purchase" Since there was a wide variety of hire purchase terms. The requirement of the law is also to see that the contract is such that it is capable of performance. If there is an agreement to perform an impossible act, it cannot be enforced. For Example, if A agrees with B to put life into B's sister, the agreement is void as it is not possible to perform.

(I) Legal Formalities

There are certain legal formalities in connection with some kinds of contracts which have to be satisfied. These legal formalities are of writing, registration, etc.

Although an agreement can be made by words spoken or written but in case if it is the requirement of the law that it must be in writing, it should be in writing otherwise the agreement will not be enforced by the court on the ground that the contract is not in writing. For example, if there is a contract to transfer immoveable property from A to B the agreement must be in writing, it must be registered and it must be properly stamped. If such an agreement lacks any of the above mentioned legal formalities, the contract will not be enforceable. Therefore, the compliance of the statutory formalities must be ensured to make the agreement legally enforceable.

Quasi Contracts

English Law identified quasi-contractual obligations first, the framers of the Indian Contract Act modified it and placed it in the act as- "certain relations resembling those created by contracts". Therefore the elements that are present in the English Quasi-contract are also found in that of the Indian Contract Act. The founder of quasi contract based on the theory of unjust enrichment was Lord MANSFIELD who explained such obligations based upon the law as well as justice to prevent undue advantage to one person at the cost of another. The concept was first taken up in the case **Moses v. Macferlan.** In the case of Sinclair v. brougham liabilities under the name of quasi contract were taken which were against the law and not within its

ambit. So later on, it was decided that the doctrine was going against the law and hence the doctrine of unjust enrichment prevailed over this theory after the case of Fibrosa Spolka Akcyjna v. Fairbairn Lawson combe Barbour Ltd. In this case remedies arising from such obligations neither constitute contract nor torts. They fall into category different form these two and that is 'quasi contract or restitution'. It was also observed that the precious theory was against public policy and ultra vires to the law.

The principle of unjust enrichment requires :

- The defendant has been "enriched" by the receipt of a "benefit"
- The enrichment is "at the expense of the plaintiff".
- The retention of the enrichment is "unjust".

Contract	Ouasi Contract
• A contract is a contract between two parties. In contract, always there is an agreement between the parties	• A quasi-contract is not a real contract Quasi contracts are also known as "constructive contracts" or "certain relations resembling those created by contracts".
• In contract, always there is an agreement between the parties	• Where as in quasi-contract, there is no agreement between the parties
• In contract, the parties must give their consent to it	• In quasi-contract, the parties do not consent.
• In contract, the liability exists between the parties by the terms of the parties	• In quasi-contract, the liability exists independent of the agreement and rests upon equity, justice and good conscience.
• In contract, the liability exists between the parties by the terms of the parties	• In quasi-contract, the liability exists independent of the agreement and rests upon equity, justice and good conscience.
• It is created by the operation of the contract.	• It is imposed by law. It is not created by the operation of the contract.
• It is right in term, and also right in personam.	• It is right in personam. I.e. strictly available against a person and is not available against the entire world.
• 2(h) of the Indian contract act, 1872, defines contract "an agreement enforceable by law is a contract"	• Salmond defines quasi contracts : "there are certain obligations which are not in truth contractual in the sense of resting on agreement, but which the law treats as If they were."

In a contract the promisor is under an obligation to the promisee and this obligation is undertaken voluntarily. The contract has all the essential elements of a valid contract, namely offer and acceptance, free consent, legal object and consideration and intention to enter into the contract. **But sometimes an obligation may be imposed by law upon a person for the benefit of another person, even though the essential elements of a valid contract are absent**. In fact, in such a case, there is neither an agreement nor a promise. **Such an obligation, though not contractual, resembles an obligation as created by contract, and the court would enforce it as if were a contract. Such obligations are called Quasi Contracts**, or relations resembling those of contracts on the other hand obligations created by agreements are called contracts. A quasi

contract rests upon the equitable principle that a person shall not be allowed to enrich himself unjustly at the expense of another. Duty, and not agreement or promise or intention, defines it. Thus, in the absence of any agreement, the law creates an obligation so that a person in possession of money or property should return it if in justice and fairness he ought not to retain it. For example, if a sum of money is paid by mistake, by A to B, then B is bound to return the money to A. This obligation or duty of B has certainly not arisen out of a contract, because B never agreed to return the money to A. This obligation is imposed upon B by law because he cannot be allowed to keep the money which belongs to A.

Sections 68 to 72 of the Contract Act deal with the cases which are deemed to be quasi contracts. The quasi-contracts are as follows;

1. Necessaries supplied to person incapable of contracting (S. 68).
2. Suit for money had and received (S. 69 and 72).
3. Quantum Meruit (S. 70)
4. Obligations of a finder of goods (S. 71).
5. Obligations of a person enjoying benefit of non-gratuitous act (S. 70).

1. Claim for necessaries supplied to a person incapable of contracting (Sec 68) : Claim for necessaries supplied to person incapable of contracting, or on his account. If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another, person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

Illustrations :

(a) A supplies B, a lunatic, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's property.

(b) A supply the wife and children of B, a lunatic, with necessaries suitable to their condition in life. A is entitled to be reimbursed from B's property.

There is no definition of what constitutes necessaries in the act. Under English law, necessaries are defined as "goods suitable to the condition in life of the minor and to his actual requirements at the time of sale and delivery." Judicial pronouncements provide more comprehensive meaning of necessaries and what it includes.

"Things necessary are those without which an individual cannot reasonably exist. In the first place, food, raiment, lodging and the like….Again, as the proper cultivation of the mind is as expedient as the support of the body, instruction in art or trade, or intellectual, moral and religious education may be necessary also…His (a minor's) clothes may be fine or coarse according to his rank; his education may vary according to the station he is to fill…Thus articles of mere luxury are always excluded, though luxurious articles of utility are in some cases allowed." It can be said that necessaries include not only things that are absolutely necessary for survival but also those that are required for a reasonable existence.

Articles of mere taste can be necessaries if the usage of society requires for that particular minor to have them.

Necessity is a relative fact. Once certain goods or particular services are put in the general category of necessaries, it is also important to see if they are appropriate to the particular minor depending on the minor's normal standard of living and whether the minor already has an adequate supply of such goods or services.

The approach to the definition of 'necessaries' in English law has both -objective and subjective elements. The objective element is concerned whether the goods or services supplied fall into the general category of something that is necessary. The subjective element looks at whether the thing supplied is appropriate to the person who receives it. For example – "Elementary textbooks might be necessary to a student of law, but not a rare edition of 'Littleton's Tenures.' Or eight or ten copies of 'Stephen's Commentaries.'

FLETCHER MOULTON LJ, opined that"…if a man satisfies the needs of an infant or a lunatic by supplying to him necessaries the law will imply an obligation to repay him for the services rendered, and will enforce that obligation against the estate of the infant or lunatic…The consequence is that basis of the action is hardly contract. The real foundation is an obligation which the law imposes on the infant to make a fair payment in respect of needs satisfied. In other words, the obligation arises re and not consensus." It was held that the onus was on the supplier to show that the minor did not have an adequate supply of waistcoats.

Thus, it seems that the knowledge of the minor's position and the supply of goods in question or the lack of it on part of the person supplying the goods is irrelevant. The quality and the quantity of useful goods supplied can make a difference to whether they are considered necessaries or not.

Earlier, under English Law, a person who supplied non-necessary goods on credit to a minor could recover nothing unless the minor had fraudulently induced him. In other words, the minor could retain the goods, and was not obliged to pay anything for them. Now, a restitutionary remedy is allowed. Where a contract is unenforceable or repudiated because the other party is a minor, the courts can order the minor to return any property received under the contract where it is just and equitable. Thus, non necessary goods cannot be retained and the minor cannot be unjustly enriched. But is the goods have been consumed or disposed of without being exchanged for other property, the supplier will still have no remedy.

It must be noted that only the estate of the minor will be liable for the necessaries and the minor will incur no personal liability for the same. Additionally, the onus is on the supplier to prove that the goods are reasonably necessary for the minor and that he has not already been in possession of enough supplies of the goods in question.

2. Re-imbursement of money paid, due by another–Section 69 : According to section 69, if a person who is legally bound to pay does not pay his obligations and the other party who has an interest in the property makes the payment – then the first party is bound to make reimbursement to the other party of the sum so paid although there is no contract between the parties.

For the application of section 69, the following two essential conditions are to be complied with

1. One person is bound by law to pay but he fails to pay.
2. While another person who is interested in the property vis a vis, payment of money, pays it. The payment made should be bona fide for the protection of one's own interest. In such a case the person so making the payment is entitled to be reimbursed by the person who was not bound to pay.

Illustration : A landlord is in arrears of some land revenue to the government. The tenant in order to avoid the sale of that land by the government and the consequential cancellation of the lease in favour of the tenant, makes the payment of the land revenue. He is thereby, entitled to recover the money so paid from the landlord. Thus, the tenant is the interested person who has made the payment and therefore the landlord is bound to reimburse him.

The payment by the interested person must be actually made to another person and not to himself. It is also necessary that the person making the payment should not himself be bound to pay. He should only be interested in making the payment in order to protect his own interest. Thus, if one person makes voluntary payment of another's debt without having any interest in the payment, then he cannot seek reimbursement from the other.

3. Obligation of persons enjoying the benefit of "non gratuitous Act"–Section 70 : Section 70 states that where a person lawfully does anything for another person or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of the thing so done or to restore the thing so delivered.

Illustration : A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own and uses/consumes it. He is bound to pay A for the goods.

Essential Conditions

For application of this section, the following conditions are to be satisfied :

- A person should lawfully do something for another person or should deliver something to him. The other person must voluntarily and freely accept the thing delivered and enjoy the work done.
- The person doing the thing or delivering the thing must not do so gratuitously i.e., he should expect payment for the same.
- The other person should enjoy the benefit of the thing delivered or work done.

When all these conditions are satisfied, the person receiving the benefit becomes bound to pay compensation to the person conforming the benefit.

Illustration : If a person voluntarily does something for another to prevent a greater danger– like to save a property from fire – not intending to do so gratuitously, he is bound to be compensated for the expenses, although actually there is no contract.

It is, however, to be noted, that :

1. When there is nothing positive done by the plaintiff but he merely refrains from doing something, that is not sufficient to entitle him to make a claim under section 70.
2. A minor is excluded from the purview of section 70 for the reason that his case has been specifically provided for by section 68. Thus, on principle, section 70 cannot be invoked upon a minor. In other words, this section has no application to a person incompetent to contract.

Quantum Meruit. The expression quantum meruit means "as much as earned". It is used where a person claims a reasonable payment for services rendered by him. A claim under quantum meruit generally arises where services are rendered in pursuance of a contract which provides for a lump sum payment after the promise is fully performed, and the party claiming for the part performance is prevented by the other party from completing it. Thus if A has

worked for B in pursuance of a contract which has since been discharged by B's breach, A may obtain reasonable remuneration for his work by sueing B on a quantum merit. The claim on quantum merit may also a rise where work has been done and accepted under a void contract. Thus, A was employed as a managing director by a company under a written contract. The contract was void and not binding because the directors who made it were not qualified. A rendered the services and sued for remuneration. He was entitled to recover on a quantum meruit. A party in default may also sue on a quantum merit for what he has done if the contract is divisible and the other party has had the benefit of the part which has been performed. A, the ship-owner failed to carry the full cargo. He was held to be entitled to recover the freight inproportion to the cargo carried. But if the contract is not divisible, the party at fault cannot claim the value of what he has done.

4. Responsibility of finder of goods–Section 71 : Section 71 contemplates still another quasi contractual situation that is when a person is a "finder of goods". Although as between a finder and the owner of the goods there is no contract, yet there are certain responsibilities which have been fixed by section 71 on the finder of goods.

According to section 71, a person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee.

A person who finds goods need not take them into his custody, but if he does take them, he takes upon himself all the liabilities and responsibilities of a 'bailee' as envisaged under section 71. Likewise, in respect of rights, a finder is treated at par with bailee. Thus the position of a finder is similar to that of bailee.

Responsibilities :

1. He is bound to take as much care of the goods found by him as a man of ordinary prudence would, under similar circumstances, take care of his own goods of the same bulk, quality and value – vide section 151 of the ICA.
2. He cannot make the use of the goods for his own purpose – vide Section 154 of the ICA.
3. He should not mix the goods found by him with his own goods – vide section 155 to 157 of the ICA.
4. Like a bailee, he is bound to return the goods to the true owner, if he can after a reasonable, be found – vide Section 160 of the ICA.
5. If due to his negligence, the goods are not returned to the true owner – then he is responsible to the true owner for any loss, deterioration or destruction of the goods, and for which he must compensate for the same – vide Section 161 of the ICA.
6. If knowing or having the means to know the true owner, or without using reasonable means to discover the true owner – he appropriates the goods to his own use – he is guilty of criminal misappropriation – vide section 403 of the IPC.

Rights :

i. The finder is entitled to a lien (i.e., a right to retain goods) even against the true owner, until he is paid by the owner, compensation for the custody, care and preservation of the goods. But it may be noted here that he is not entitled to sue for such compensation – vide section 168 of the ICA.

ii. Where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward as well as retain the goods until he receives it – vide Section 168 of ICA.

iii. The finder is entitled to sell goods in certain circumstances – vide section 169 of the ICA. If the owner cannot be found with reasonable diligence, or if he refuses to pay lawful charges of the finder, the finder may sell it :

- When the thing is in danger of perishing or losing great part of its value.
- When the lawful charges of the finder in respect of it amounts to 2/3rd of its value.

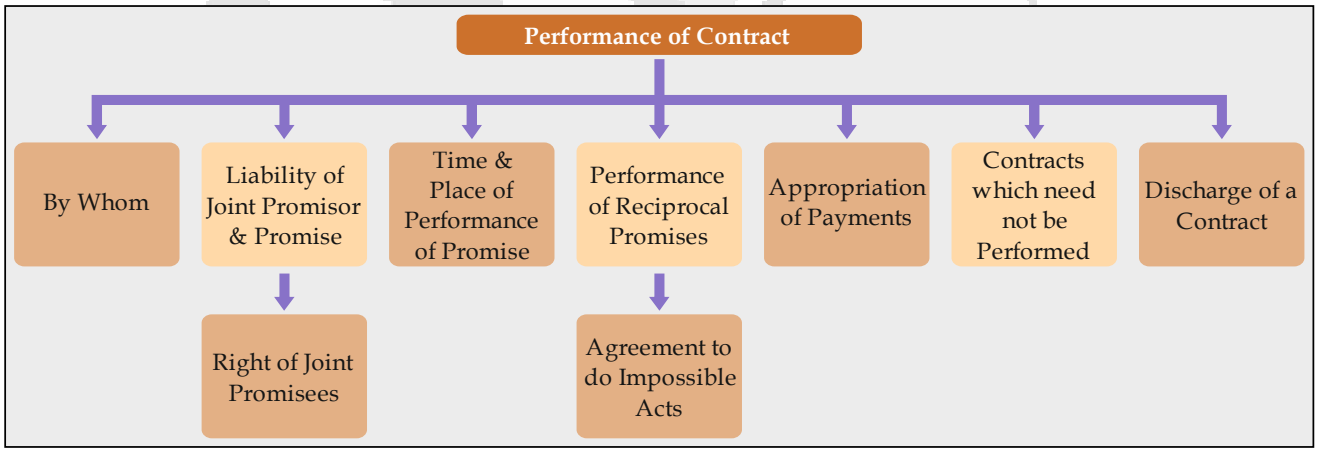
5. Liability of persons to whom money is paid or thing is delivered, by mistake or under coercion – Section 72 : According to section 72 a person to whom money has been paid or anything delivered, by mistake or under coercion, must repay or return it.

Illustration : A and B owe Rs 100/- to C. A alone pays the amount to C. B not knowing the fact pays the same to C over and again. C is bound to repay the amount to B. It is based on the Principle of Equitable Restitution, where money is paid under mistake or ignorance of fact, it may be recovered back.

It may be mentioned here that section 72 does not draw any distinction between mistake of fact and mistake of law. In other words, money paid under mistake is reasonable whether paid under mistake of fact or law.

Likewise, money paid 'under pressure of circumstance' may be recovered even though 'coercion' defined in section 15 of the ICA is not established.

Performance of contract



Obligation of parties to contracts (Section-37)

The parties to a contract must either perform, or offer to perform, their respective promises unless such performance is dispensed with or excused under the provisions of the Contract Act or of any other law.

Promises bind the representatives of the promisor in case of death of such promisor before performance unless a contrary intention appears from the contract.

Analysis of Section 37

A contract being an agreement enforceable by law, creates a legal obligation, which subsists until discharged. Performance of the promise or promises remaining to be performed is the principal and most usual mode of discharge.

The basic rule is that the promisor must perform exactly what he has promised to perform. The obligation to perform is absolute. Thus, it may be noted that it is necessary for a party who wants to enforce the promise made to him, to perform his promise for himself or offer to perform his promise. Only after that he can ask the other party to carry out his promise. This is the principle which is enshrined in section 37. Thus, it is the primary duty of each party to a contract to either perform or offer to perform his promise. He is absolved from such a responsibility only when under a provision of law or an act of the other party to the contract, the performance can be dispensed with or excused.

Thus, from above it can be drawn that performance may be actual or offer to perform.

Actual Performance : Where a party to a contract has done what he had undertaken to do or either of the parties have fulfilled their obligations under the contract within the time and in the manner prescribed.

Offer to perform or attempted performance or tender of performance : It may happen sometimes, when the performance becomes due, the promisor offers to his obligation but the promisee refuses to accept the performance.

By whom a contract may be performed (Section 40, 41 and 42)

Person by whom promise is to be performed-Section 40

If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other case, the promisor or his representatives may employ a competent person to perform it.

The promise under a contract may be performed, as the circumstances may permit, by the promisor himself, or by his agent or his legal representative.

1. **Promisor himself :** If there is something in the contract to show that it was the intention of the parties that the promise should be performed by the promisor himself, such promise must be performed by the promisor. This means contracts which involve the exercise of personal skill or diligence, or which are founded on personal confidence between the parties must be performed by the promisor himself.

   Example : A promises to paint a picture for B and this must be performed by the promisor himself.

2. **Agent :** Where personal consideration is not the foundation of a contract, the promisor or his representative may employ a competent person to perform it.

3. **Legal Representatives :** A contract which involves the use of personal skill or is founded on personal consideration comes to an end on the death of the promisor. As regards any other contract the legal representatives of the deceased promisor are bound to perform it unless a contrary intention appears form the contract (Section 37, para 2). But their liability under a contract is limited to the value of the property they inherit from the deceased.

4. **Third person :**

   Effect of accepting performance from third person-Section 41

   When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

That is, performance by a stranger, if accepted by the promisee, this results in discharging the promisor, although the latter has neither authorised not ratified the act of the third party.

As per Section 41 of the Indian Contract Act, 1872, When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor, That is, performance by a stranger, accepted by the promisee, produces the results of discharging the promisor, although the latter has neither authorised nor ratified that act of the third party. Therefore, in the present instance, B can sue only for the balance i.e., Rs. 4000/- and not for the whole amount.

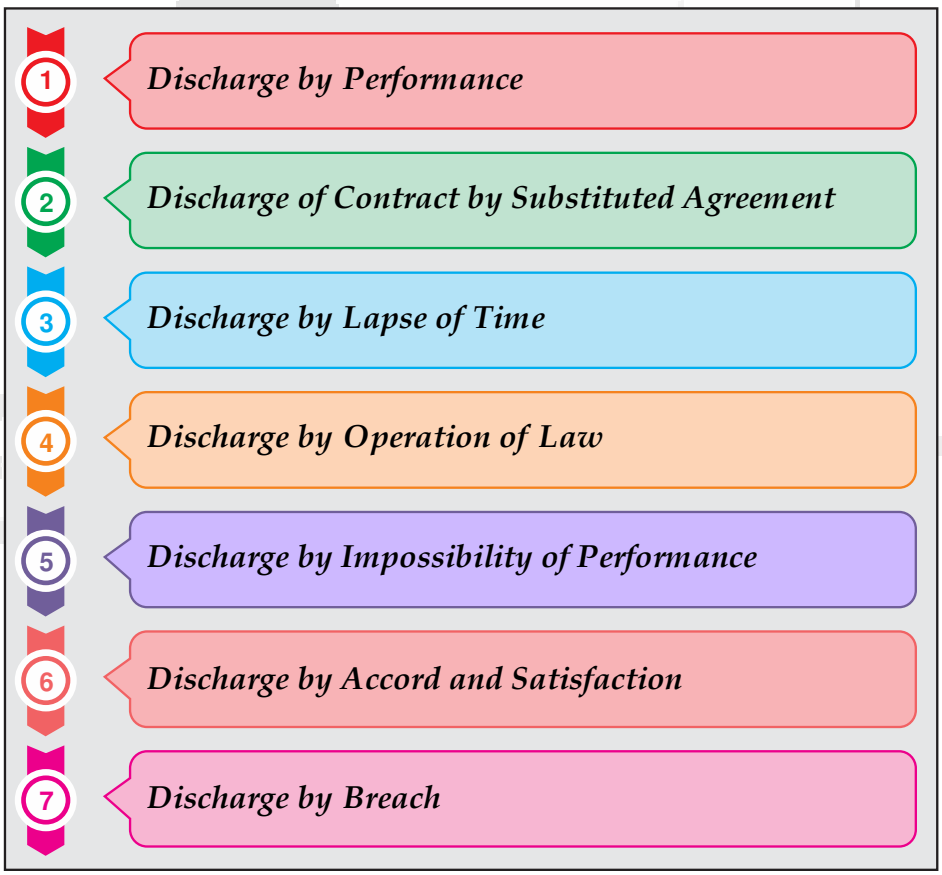
5. **Joint promisors : (Section 42)**

When two or more persons have made a joint promise, then unless a contrary intention appears by the contract, all such persons must jointly fulfil the promise. If any of them dies, his legal representatives must, jointly with the surviving promisors, fulfill the promise. If all of them die, the legal representatives of all of them must fulfil the promise jointly.

Discharge of a contract

Discharge of contract refers to the termination of contractual responsibilities. When the parties enter into any contract, the rights, and duties in the form of contractual obligations are decided on mutual basis. Accordingly, when the rights and duties are by performance or by any other form are put out then contract is said to be discharged. Once, the contract is declared discharged then no party is liable for any obligation even though any of the obligation remains incomplete or not performed.

A Contract is deemed to be discharged, that is, concluded and no longer binding, in the following circumstances :



1. Discharge by performance

A contract may be performed either of the following two ways: **Actual Performance and Attempted performance or tender.** 'Tender' means an offer for performance of a contract. When parties either performed or attempted to perform/tendered out their obligations under the contract, is said to be discharge of the contract by performance. Performance by either party involves the occurrence of any constructive condition, it triggers the duty of other party also. Most contracts are discharge in this manner only.

2. Discharge of Contract by Substituted/Mutual Agreement

A contract stems out or replaced or modified from the original agreement between the parties is substituted agreement. **Discharge by substituted agreement** is when the parties terminate or discharge the contract by fresh agreement by mutual consent. This agreement can be expressed or implied and both the parties are in conformity over it. Section 62 and 63 of the act mentions various modes of discharge of an original contract. They are as follows:

(a) Novation : Novation is the substitution of original contract with new contract. Parties may remain the same or different parties. For Novation, consent of all the parties is required then only the novation would be valid and effective. Furthermore, the succeeding should be capable of enforcement by law, the consideration of the new agreement is the exchange of promises in the new contract and not to enforce the original one. One more additional condition is that there should not be breach in the original contract by either of the party.

Example : A owes money to B under a contract. It is agreed between A, B and C that B should accept C as his debtor, instead of A. The old debt of A and B is at an end and a new debt from C to B has been contracted. There is novation involving change of parties.

(b) Alteration : Alteration refers to the changes made in one or more conditions of the contract. A valid alteration discharges the original contract and a contract with a new terms comes into effect.

Distinction Between Novation and Alteration :

(i) In case of novation, a **new contract** is made for the original contract whereas **in alteration no new** contract is entered into.

(ii) In case of novation, **sometimes** contracting **parties also change** but in case of **alternation the parties remain the same**. Only the terms of the contract are changed in case of alteration.

Any alternation in the terms of contract without the consent of all parties, renders the contract void. The effects of 'material alteration' will be discussed under the head, "Discharge by Operation of Law".

c. Rescission : This refers to the cancellation of a contract or the material terms of the contract by the consent of all the parties to it or by the aggrieved party to it. When either party unable to perform his obligations, another party who is known to be aggrieved party has the right to rescind the contract. Aggrieved party has the right to claim for compensation for breach of contract.

d. Remission : Section 63 allows remission of a contract. Remission refers to the acceptance of a lesser performance in discharge of the entire obligation under a contract.

Example : A has borrowed 500 from B. A agrees to accept 250 from B in satisfaction of the whole debt. The whole debt is discharged.

e. Waiver : When the party who has the right to claim for performance discounts the other party on the part of performance. This **may also be a failure of a party to demand performance of a contract by the other party.** A waiver does not require consideration because a promisee may dispense with the performance of the promise made to him for any satisfaction which he thinks fit.

Example : A promises to paint a picture of B. B afterwards forbids him to do so. A is no longer

bound to perform the promise.

f. Merger : Merger refers combining two or more rights into one contract. **When one right mentioned in the old contract is merged with the newly acquired superior rights by the same party, is known as the merger of rights.** In this case inferior right will automatically gets discharge.

Examples : Where a part-time lecturer is made full-time lecturer, merger discharges the contract of part-time lectureship.

3. Discharge by lapse of time

A contract will be discharged if it is not enforced within a definite period is known as the 'Period of Limitation'. The Limitation Act, 1963 prescribes the period of limitation for various contracts. **When a contract has to be performed within a stipulated time and the party does not perform it within the time limit, then the contract stands to be discharged by the lapse of time**.

For example, period of limitation for exercising right to recover an immovable property is twelve years, and right to recover a debt is three years. Contractual rights become time barred after the expiry of this limitation period. Accordingly, if a debt is not recovered within three years of its payment becoming due, the debt ceases to be payable and is discharged by lapse of time.

4. Discharge of operation of law

A contract stands discharged by operation of law in the following circumstances.

Death : In this case, contract is discharged, in the event of death of the promisor. In other cases, legal representative of the deceased will perform the promise on behalf of the promisor.

Unauthorized material alteration of a written document

A party can discharge the contract if another party changes/alters the material conditions of the contract without taking the assent of another party.

Insolvency

When a person is adjudged insolvent. He is not liable to pay any liability which means the contract becomes discharged of the person who becomes insolvent.

Merger

Merger refers combining two or more rights into one contract. When one right mentioned in the old contract is merged with the newly acquired superior rights by the same party, is known as the merger of rights. In this case inferior right will automatically gets discharge.

For instance, A hires a factory premises from B for some manufacturing activity for a year, but 3 months ahead of the expiry of lease purchases that very premises. Now since A has become the owner of the building, his rights associated with the lease (inferior rights) subsequently merge into the rights of ownership (superior rights). The previous rental contract ceases to exist.

5. Discharge by Accord and Satisfaction

Under this type of discharge of contract, all the parties to the contract must agree to performance which is different from the original performance. It may be done by following ways:

Accord

It is an executory contract to perform an act which will satisfy the current obligation. It will suspend the contract but not discharge it.

Satisfaction

It is the performance of accord, which discharges the original contract.

If the obligor refuses to perform

The aggrieved party can sue for the original obligation or pursue a decree for specific performance on the accord.

6. Discharged by Impossibility of Performance

When the performance is not possible under a contract then it is said to be void. It is premised on the principle that *"the law does not recognise what is impossible and what is impossible does not create any obligation."*

Section 56 deals with the impossibility of performance. According to this Section, there are two kinds of impossibility:

1. Initial impossibility; and
2. Subsequent impossibility.

1. Initial Impossibility : Initial or pre-contractual impossibility is the impossibility which was present at the time of making the contract. Such impossibility is only physical impossibility but not a legal impossibility. Therefore, the agreement to do an existing performance of an impossible act is void.

The initial impossibility may be:

(i) Known Impossibility : When the impossibility of the performance is known to the parties then it is called absolute impossibility and the contract is void ab initio. The parties has no right to claim for compensation or restitution.

(ii) Unknown Impossibility : When both the parties are not aware or ignorant of the impossibility of the performance that was present at the time of making the contract. As the performance is not possible on the part of both the parties, contract would be declared void on the grounds of mistake of both the parties.

2. Subsequent or Supervening Impossibility : It is the post contractual impossibility which is discovered after the formation of contract. **Subsequent or post-contractual impossibility is the situation when the performance was possible at the time of the formation of contract and after that the performance become impossible due to any uncertain reason which is not in the control of the promisor.** So, the contract becomes void and the performance become impossible

Example : A and B wanted to marry each other. Before the time fixed for marriage, A goes mad. The contract becomes void.

Exceptions to the Doctrine of supervening impossibility:

Following are some of the circumstances in which non-performance of a contract was held not to be excused.

(i) Difficulty of performance : If a contract becomes difficult to perform but not impossible the promisor would not be discharged on that account.

(ii) Commercial Impossibility would not discharge of a contract. A contract would not be deemed to be impossible because it does not remain profitable to the promisor or would make the promisor to incur losses.

(iii) Action of a third party : If a man chooses to answer for the voluntary act of a third person, there is no reason in law or justice why he should not be held for his inability to procure that act.

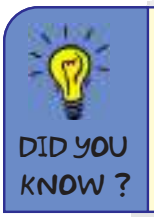
(iv) Strikes, lock-outs, civil disturbances and riots do not discharge a contract unless there is a clause in the contract to that effect.

(v) Partial impossibility : Where a contract is entered into for more than one purpose, the contract would not become impossible, if one of the objects has become impossible to achieve.

Consequences of Supervening Impossibility

Supervening impossibility makes a contract void. The parties are discharged from their respective obligations under the contract (Sec. 65). The party who has received any advantages under it should restore it to the other party.

Note : Above topic has already been discussed in this unit.



The divergence between Indian corporate law and its English counterpart became clearer with India's economic liberalization in 1991.

Ques. *Which of the following is a ground of supervening impossibility –*

(A) Strikes *(B) Lockouts*

(C) Riots *(D) None of the above*

Ans. *(D) Contract becomes impossible and declared to be void when below mentioned conditions are satisfied :*

(i) The performance becomes impossible after the formation of the contract.

(ii) Impossibility occurs due to any event which is not in the control of the promisor.

(iii) Impossibility should not be the result of negligence on the part of promisor.

7. Discharge by Breach of Contract

Breach of contract refers to the failure or refusal of performance by either party. A contract becomes void due to breach of contract which arises due to below mentioned circumstances:

(i) When promisor refuses or does not perform the obligation on his part

(ii) he disables himself from performing his part of the contract

(iii) his acts make his performance impossible

Breach of Contract

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There are two types of Breach of contract :

I. Actual breach; and

II. Anticipatory breach

I. Actual Breach of Contract

Actual breach of contract occurs when a party to a contract refuses or does not perform the obligation on his part. Actual breach can occur **when the performance is due or during the performance.**

1. On Due Date of Performance : At the time when performance is due, either party refuses or does not perform the obligation on his part, it is the actual breach on due date of performance.

Illustration : Anta agreed with Banta to sell 500 TV sets on 1st November. Anta refuses to deliver the TV sets on the due date. This is a breach of contract on due date.

Effects/Consequences of non-performance on due date of performance :

A. Where Time is the Essence of the Contract, there will be the following effects :

(i) Contract Becomes Voidable : When the party does not perform on or before the time due for performance, the contract is voidable at the option of the promise.

(ii) Compensation in Case of Prior Notice : When the contract becomes voidable at the option of the promise, he may choose to accept the performance after providing stipulated time to the promisor. In such a case, if promisor does not perform the obligation in that time also then promise can claim for the compensation on the grounds that he had already given the notice for performance to the promisor.

B. Where the time is not essence of the Contract, there will be the following effects :

(i) When the promisor does not perform the obligation within the specified time given, contract does not become voidable.

(ii) **Compensation:** The promisee can claim for compensation at any event of non-performance.

2. During performance of contract: When the party started the performance and during the course of performance, he does not perform the obligation or fails to do so then it is breach during the performance of contract. Such a breach may either be any express or implied repudiation.

Express Breach of contract is when party by his words; written or verbal the performance. Implied Breach of contract is when any party by his conduct or abstinence renders the completion of the contract.

II. Anticipatory Breach of Contract

When the party to a contract incapacitates himself from performance or refuses to act upon the contract on or before date of the performance is due. It is considered to be a declaration by one party under the contract his intention of not performing the contract before the due date of performance. Such a breach is also known as 'constructive breach of contract.'

Anticipatory breach can be done in two ways:

(i) Express breach by written or spoken words.

(ii) Implied breach of contract by the act or conduct or abstinence of a party which makes the performance of a promise impossible.

Consequences of Anticipatory Breach of Contract

Section 39 discusses the consequences of anticipatory breach of contract, **"When a party to a contract has refused to perform or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct his acquiescence in its continuance."**

The effects/consequences of the anticipatory breach of contract are:

1. Promisee is allowed not to perform further
2. Promisee is entitled to choose any of the options mentioned below:

The First Option : Promisee can declare the contract to be discharged and put it to an end and sue the party at default for breach of contract.

The Second Option : The promisee will wait for the performance till the time arrive for the performance.

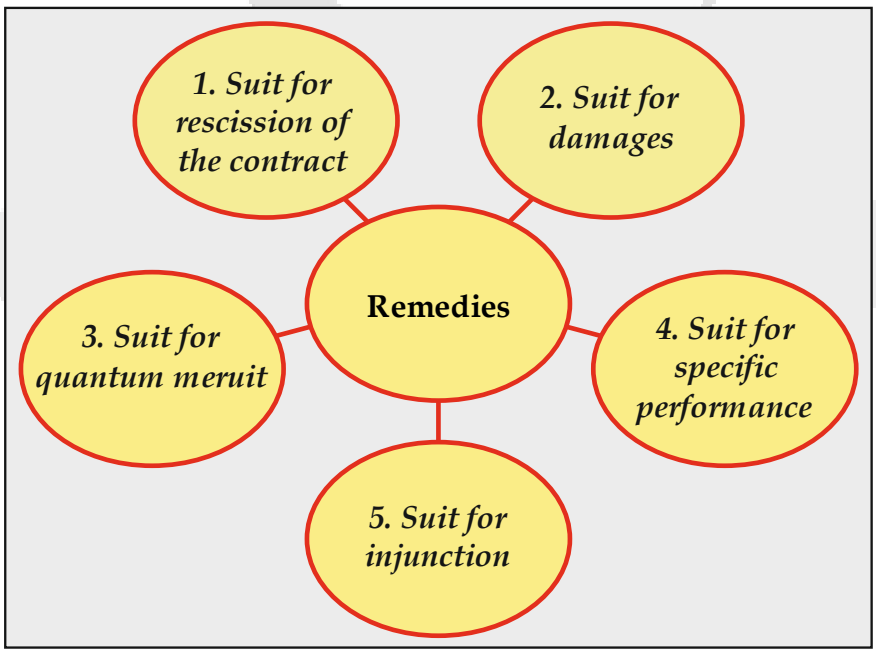
If promisee chooses the second option, following are the effects :

(i) Contract **will alive for both the parties.** The promisor can perform on the date or before the due date of performance and promisee has to accept the performance.

(ii) If any event occurs before the due time of performance and performance becomes impossible then contract will be discharged. The party on default can take the advantage of the event to discharge the contract. Promisee will have no rights to sue against the promisor for the damages.

Remedies for Breach of Contract

A breach of contract discharges the promisee from his obligation of performing the contract. At the same time, the law provides certain remedies to the promisee, i.e. the injured party against the promisor or the party at default to enforce his rights under the contract. An injured or aggrieved party has one or more of the following remedies:



1. Rescission of the Contract: If one party to the contract breaks/breaches his promise to perform then other party has the right to rescind the contract. After the breach from either party the aggrieved party is not required to perform his part of promise under the contract. He is also entitled to claim for the compensation for the damages for the breach of contract by the other party.

Example : Rama promises to deliver a book on 5th January and Seema agrees to pay its price on receipt of the book. Rama fails to deliver the book for no valid reason. Seema may treat the contract as repudiated and may refuse to pay the price.

When the court can grant rescission :

The court may grant rescission in any of the following cases :

- Where the contract is voidable by the plaintiff, i.e. aggrieved party.
- Where the contract is unlawful for causes not apparent on its face and the defendant is more to blame than to the plaintiff.

When the Court may Refuse Rescission :

1. Where the party entitled to rescission has expressly or impliedly ratified the contract.
2. Where, owning to the change of circumstances (not being due to any act of the defendant himself), the parties cannot be restored their original position.
3. Where third parties have, during the subsistence of the contract, acquired rights in good faith.

Effects of Rescission :

1. Restitution
2. Right to compensation for damages

2. Suit for Damages : The aggrieved party who has suffered from the damages may file the suit against the party who has done breach. Damages are in the form of money award. Damages may be ordinary, special, exemplary, or nominal. The Court awards ordinary or natural damages arising in the normal course of things from breach of contract. Damages are the compensation of loss suffered by the aggrieved party and not the punishment to the party at default.

Rules as to Payment of Damages : Rules as to payment of damages are contained in section 73. These rules are based on the well-known case of Hadley v. Baxendale.

According to Section 73, aggrieved party is entitled to the following :

(i) **Natural or Ordinary Damages:** An aggrieved party can claim for the damages which naturally occurred in the usual course of things from such breach.

(ii) **Special Damages, if the Parties had Knowledge :** It is a type of damage which both the parties knew will arise in the case of breach from either side. An injured/ aggrieved party can claim for the special damages arising from the special or unusual course of things from such breach and those circumstances were already known to both the party.

(iii) **No Compensation for any Remote and Indirect Loss :** there will no compensation in the condition of remote or indirect loss suffered by the aggrieved party.

(iv) Compensation for Breach of Quasi-Contract : The aggrieved party can claim for the damages sustained due to nonfulfillment or breach of Quasi-contract.

(v) Estimate of the Damage : In estimating the loss or damage sustained from the breach of the contract, the methods which existed as the remedy for the inconvenience caused by the non-performance of contract must be considered.

Other Rules :

1. Party must have actually suffered loss
2. No punitive damages are allowed
3. Sometimes, exemplary damages are allowed
4. Nominal damages
5. Damages for inconvenience, discomfort, sufferings or mental agony
6. Damages for loss of reputation
7. Damages agreed in advance
8. Cost of suit or decree
9. Difficulty in assessment of damages
10. Proof of damages

Liquidated damages and penalty

When a breach of contract occurs, liquidated damages and/or penalty is payable.

As per the English law, the amount specified can be interpreted either as liquidated damages or penalty.

- **Liquidated damages:** If the amount fixed by all parties is a genuine estimate of the loss by a future breach of contract, then it is liquidated damages. Thus, all parties to the contract agree that the amount is fair compensation for the breach.
- **Penalty:** If the amount fixed by all parties is unreasonable or used to force the performing party to fulfil the obligation, then it is a penalty. In such cases, the amount is disregarded, and the suffering party cannot claim more than the actual loss.

The Indian law makes no distinction between liquidated damages and penalty. The compensation awarded cannot exceed the amount mentioned in the contract. According to section 74 of the Indian Contract Act, 1872, if the parties fix the damages, the Court will not allow more. However, it may award a lesser amount, depending on the case. Hence, the suffering party gets reasonable compensation but no penalty.

There is an exception to section 74 which states that if a party enters into a contract with the State or Central government for the performance of an act in the interest of the general public, then a breach of such a contract makes the party liable to pay the entire amount mentioned in the contract.

3. Suit on Quantum Meruit : This type of remedy is available when aggrieved party has partly performed the contract, he can sue for the damages on the non-performance of the other party. This type of remedy is available only in specific circumstances. This right is available with the addition of right for damages.

Cases and Conditions :

1. **When the contract is terminated by breach :** When a party starts performing his promise under a contract but the other one prevents him for further performance, the contract is terminated by breach.
2. **When an agreement is discovered to be void or contract becomes void :** When an agreement is discovered to be void or a contract becomes void, any person who has received an advantage under such agreement or contract is bound to restore it to make compensation for it to the person from whom he received it.
3. **When something is done or things supplied non-gratuitously :** When a person lawfully does something for another person or delivers anything to him without any intention of doing so gratuitously and the other person enjoys the benefit thereof, he is bound to make compensation or to restore the thing so done or delivered.
4. **When something done under a contract but consideration not fixed :** In case a party supplies goods or renders services at the express or implied request of a party, but no consideration is fixed, the other party is entitled to a consideration on quantum meruit.
5. **When part performance is accepted in case of divisible contract :** Sometimes, a contract is divisible and a party performs a part of it and thereafter refuses to perform the remaining part. The party in default may claim compensation on quantum meruit, if the following conditions are satisfied :
   (a) If the contract is divisible, and
   (b) If the other party (i.e. party not at default) has enjoyed benefits of the part performance.
6. **When the performance is poor :** Sometimes, a contract is indivisible and a lump-sum is to be paid for proper performance. But the contract is performed poorly or defectively which disentitles the promisor to claim the stipulated remuneration. In such a case, the party in default is entitled to claim lump-sum subject to some deduction for poor or defective performance.

4. Suit for Specific Performance : When the damages are not an adequate remedy, the court may ask the defendant for the specific performance. However, specific performance cannot be asked in all the cases.

A party seeking specific performance of a contract must have performed all the terms of the contract at the time of bringing the action for specific performance.

The following contracts cannot be specifically enforced:

1. When the monetary compensation is adequate relief for the non-performance of a contract : Contract of supply or ordinary commodities/articles or for sale of shares readily available in the market cannot be specifically enforced.
2. Where the performance of a contract runs into minute or numerous details, e.g. in case of a contract for construction of a building.
3. Where the performance of contract is dependent on the personal qualities of the parties : Contracts of singing, dancing, teaching or writing etc. which if specifically enforced may lead to results not contemplated in the original contract.

4. Where the contract is dependent on the personal volition of the parties, eg. a contract to marry.
5. Where the contract is in its nature determinable or revocable. Therefore, any of the parties can put the contract to an end.
6. Where the performance of a contract involves the performance of a continuous duty which the court cannot supervise.
7. Where the contract is made by trustees in breach of their trust.
8. Where the contract is not certain.
9. Where the contract is inequitable to either party.
10. Where the contract by a company is beyond its powers or ultra vires of its memorandum of association.
11. Where one of the parties is a minor.

5. Suit for Injunction : Injunction prohibits the party to the contract to do anything which amounts to the breach of contract. An aggrieved party may ask for the injunction and the court may issue so.

The power of the Court to grant injunction is discretionary. However, the Courts generally grant injunctions in the following cases :

(i) In case of clear negative stipulation : Sometimes there is a clear negative stipulation in the contract that a party will not do a particular thing.

(ii) In case of inferred negative stipulation : Where in a contract, there is no clear negative stipulation but it can be inferred from it that there existed a negative stipulation, the court may also grant an injunction.

Essentials for a Valid Contract of Guarantee :

1. Tripartite Contract : There are three parties to it viz. the creditor, the principal debtor, and the surety. Principal debtor may not be express party to the contract but principal debtor may be a party by implication.

2. Three Contracts :

(i) Between the creditor and principal debtor

(ii) Between the creditor and the surety

(iii) An implied contract between the principal debtor and the surety.

3. Capacity to Contract : Usually, for the validity of a contract the parties must be competent to make the contract. However, in the contract of guarantee, the principal debtor may not be a person competent to contract but his incapacity should be in the knowledge of the surety. Surety will be considered as the principal debtor.

4. Concurrence : Consent of all the three parties is a must for a valid contract of guarantee.

5. Free consent : A contract of guarantee must be with the free consent of the parties. Any guarantee which has been obtained by the creditor by means of misrepresentation, concerning a material part of the transaction or by means of keeping silence as to a material circumstance is invalid.

6. At the request of the principal debtor : Guarantee is given by the surety at the express or implied request of the principal debtor.

7. Debt or liability : In a contract of a guarantee, the surety undertakes to pay a debt or discharge a liability of a third person in case of his default. If there is no valid debt or liability there can be no valid contract of guarantee.

8. Consideration : Consideration is must for every contract. The contract of guarantee is not an exception. It must also be supported by consideration. There need not be any direct and separate consideration between the surety and the creditor.

9. Writing not necessary : A contract of guarantee need not be in writing. A guarantee may be either oral or written. [Sec. 126]

10. Other essentials of a contract : In order to create a valid contract of guarantee, all other essentials of a contract must be present in a contract of guarantee.

Exercise-2 : Review Your Progress

1. *In special damages, damages:*
- *(A) Are not recoverable altogether*
- *(B) Are illegal being punitive in nature*
- *(C) Cannot be claimed as a matter of right*
- *(D) Can be claimed as a matter of right.*

2. *The law provides for certain remedies in case there is no real agreement. Which of the following remedy cannot be claimed by the parties?*
- *(A) The agreement to be considered as void*
- *(B) The party at fault can be compelled to pay damages*
- *(C) The contract becomes voidable at the option of the parties*
- *(D) Right to sell the private property of the other party*